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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91165809
Party	Defendant Nalge Nunc International Corporation Nalge Nunc International Corporation 75 Panorama Creek Drive Rochester, NY 146020365
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Date	05/08/2006
Attachments	Applicant Brief - Motion Summary Judgment.pdf (13 pages)(756081 bytes) Declaration-Sarah Otte Graber.pdf (6 pages)(274330 bytes) Declaration-Denise Riemann.pdf (13 pages)(3228272 bytes) Brief-Exhibit 15.pdf (75 pages)(3176155 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<u>In re Application, Serial No. 76/572,253</u>)	
TriForest Enterprises, Inc.)	
	)	Opposition No. 91165809
Opposer,)	
v.)	
)	
Nalge Nunc International Corporation)	
)	
Applicant-Respondent.)	
_____)	

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**APPLICANT NALGE NUNC INTERNATIONAL CORPORATION'S
BRIEF IN SUPPORT OF ITS OPPOSITION TO OPPOSER'S
MOTION FOR SUMMARY JUDGMENT
AND
MOTION AND BRIEF IN SUPPORT OF
APPLICANT'S RULE 56(f) MOTION FOR DISCOVERY
NECESSARY TO RESPOND TO OPPOSER'S MOTION
FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Opposer TriForest Enterprises, Inc. (hereinafter "TriForest" or "Opposer") filed this opposition against Applicant Nalge Nunc International Corporation (hereinafter "Applicant" or "Nalge") on the basis that Nalge's water bottle mark is functional and lacks secondary meaning. Without any supporting evidence, other than a misleading and self-serving declaration, Opposer filed a Motion for Summary Judgment on April 11, 2006. The sole basis for Opposer's Motion is alleged functionality of Nalge's mark. Nalge, through counsel, respectfully submits that Opposer's Motion is untimely and should be denied pursuant to 37 C.F.R. §2.127. If the

Trademark Trial and Appeal Board considers Opposer's Motion, Nalge submits that Opposer has failed to show by the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits"¹ that there is no genuine issue as to all material facts or that Opposer is entitled to judgment as a matter of law. Alternatively, pursuant to Rule 56(f), Nalge submits that in order to properly explore key issues relevant to the alleged functionality of Nalge's mark and for Nalge to fully respond to Opposer's Motion, Opposer's Motion should be suspended to require Opposer to fully supplement its responses to Nalge's discovery requests, which are currently wholly deficient. Thus, Nalge requests a continuance under Rule 56(f), 37 C.F.R. § 2.127(e)(1) and TBMP Rule 528.02, to give Nalge the opportunity to receive all discovery necessary to respond to Opposer's Motion.²

II. LEGAL STANDARD FOR A TIMELY FILED MOTION FOR SUMMARY JUDGMENT

A motion for summary judgment must first be timely filed. The rules governing the time for filing a motion for summary judgment are clearly stated in 37 C.F.R. § 2.127 and TBMP Rule 528.02. 37 C.F.R. § 2.127 states that the time for filing such a motion is "prior to the commencement of the first testimony period, as originally set or as reset." As noted below, Opposer did not comply with 37 C.F.R. § 2.127, and, therefore, its Motion should be denied without consideration.

If the Board considers Opposer's Motion, Nalge submits that remaining disputed issues of fact preclude summary judgment. The Board may not enter summary judgment unless there are no genuine issues of fact. Old Grantian Co. v. William Grants & Sons Ltd., 361 F.2d 1018 (C.C.P.A. 1966). The Grantian court advised using caution in granting summary judgment and

¹ Rule 56(c), Federal Rules of Civil Procedure.

² Opposer did not serve Applicant with any Requests for Admissions, Document Requests, or Interrogatories, and Opposer's responses to Applicant's discovery requests are deficient. Applicant has filed a Motion to Compel to force Opposer to fully respond to Applicant's discovery requests.

held that “the moving party for summary judgment has the burden of showing the absence of any genuine issue as to *all* the material facts, which under applicable principles of substantive law, entitle [the movant] to judgment as to matter of law.” Grantian Company, 361 F.2d at 1021 (emphasis added). Because of the factual complexities of trademark law and functionality, which are further exacerbated by Opposer’s apparent misunderstanding of de facto and de jure functionality, Opposer’s Motion should be denied. As shown below, and as demonstrated by the Declarations of Denise Riemann, PhD. and Sarah Otte Graber submitted in support of this Opposition, Opposer has failed to carry its burden of showing the absence of all genuine issues of material fact, and, therefore, its Motion should be denied.

Alternatively, Nalge seeks relief under Rule 56(f) of the Federal Rules of Civil Procedure. As noted above, Opposer’s responses to Nalge’s discovery requests are deficient and have precluded Nalge from obtaining facts and information from Opposer relevant to the issues of functionality. Relief under Rule 56(f) is allowed in situations where “a nonmoving party has not had an opportunity to make full discovery.” Celotex Corp. v. Catrett, 106 S.Ct. 2548, 2554 (1986). As a general rule, the Board and the Federal Circuit liberally grant motions under Rule 56(f). “If a party has demonstrated a need for discovery which is reasonably directed to facts essential to its opposition to the motion for summary judgment, *discovery will be permitted*.” McCormick Delaware, Inc. v. Williams Foods, Inc., 2001 TTAB LEXIS 207 (Feb. 14, 2001) (emphasis added), *citing* Opryland USA Inc. v. The Great American Music Show, Inc., 970 F.2d 847, 852 (Fed. Cir. 1992). Relief under Rule 56(f) is particularly appropriate in this case because the information required by Nalge is in the possession of Opposer and is otherwise unavailable. *See* Burlington Northern & Santa Fe Co. v. The Assiniboine, 323 F.3d 767, 775 (9th Cir. 2003)(trial court’s refusal to grant relief under Rule 56(f) is an abuse of discretion when discovery sought is in the possession of the opposing party).

III. OPPOSER'S MOTION IS UNTIMELY

The instant opposition proceeding was commenced by the Trademark Trial and Appeal Board on July 11, 2005, at which time the Board set Opposer's 30-day testimony period to close on April 27, 2006. Therefore, Opposer's testimony period began on March 29, 2006. Pursuant to 37 C.F.R. § 2.127(e)(1), "[a] motion for summary judgment should be filed prior to the commencement of the first testimony period," Opposer's counsel, however, served Opposer's Motion on April 4, 2006, and declared that he deposited the motion with the U.S. Postal Service ("USPS") on the same day. Thus, on the date it was signed, Opposer's Motion was already five days beyond the deadline for filing summary judgment motions. Moreover, pursuant to 37 C.F.R. §§ 2.195 and 2.197, documents deposited with the USPS without a certificate of mailing are considered received by the U.S. Patent and Trademark Office ("USPTO") on the date the document is actually received, as opposed to the date it is deposited with the USPS. The TTAB's record demonstrates that Opposer's Motion was received on April 11, 2006.³ Thus, Opposer's Motion was untimely by almost two weeks. The Board's rules provide that Opposer's untimely Motion should not be considered. *See* TBMP § 528.02 at page 500-105 (Second Edition, Revision 1).

IV. GENUINE ISSUES OF MATERIAL FACT

The assertion of functionality raised by Opposer's Motion involves disputed factual issues that cannot be resolved on a motion for summary judgment. In this case, facts exist that demonstrate Nalge's mark is not functional.

First, Opposer incorrectly implies in its Motion that because the mark claimed in Application Serial No. 76/572,253 is directed to a product configuration, as opposed to product

³ *See* Declaration of Sarah Otte Graber ("Graber Decl.") at ¶¶ 1-3, attached hereto, and Exhibits 11-12, attached thereto.

packaging, it is not eligible for registration. (See Opposer's Motion, p. 6). Opposer is wrong, and its argument is directly contrary to holdings of the Supreme Court. Indeed, the Supreme Court has held that product configuration is protectable under trademark law. Traffix Devices, Inc. v. Marketing Displays, Inc., 121 S.Ct. 1255 (2001); Wal-Mart Stores, Inc. v. Samara Brothers, Inc., 120 S.Ct. 1339 (2000); see also In re Minnesota Mining and Mfg. Co., 335 F.2d 836, 837 (C.C.P.A. 1964). Thus, Nalge's mark is eligible for trademark protection. Further, a stricter standard of functionality is not applied in cases of marks direct to product configuration. Id.

Second, an evaluation of the factors set forth in Morton-Norwich demonstrates that Nalge's mark is not functional.⁴ Morton-Norwich, 671 F.2d 1332, 1340-41 (C.C.P.A. 1982). For example, there has never existed a utility patent on the whole of Nalge's mark. (See Declaration of Dr. Denise Riemann, at ¶ 3, hereinafter "Riemann Decl.", attached hereto). This fact alone is evidence demonstrating that Nalge's mark is not functional. Morton-Norwich, 671 F.2d at 1340-41; Mine Safety Appliances Co. v. Storage Battery Co., 405 F.2d 901, 902 (C.C.P.A. 1969); Best Lock Corp. v. Schlage Lock Co., 413 F.2d 1195, 1199 (C.C.P.A. 1969). In addition, Opposer has failed to offer a shred of evidence that Nalge touts the utilitarian advantages of the Nalge mark in its advertising, a factor also suggesting that Nalge's mark is not functional. Id.; Riemann Decl., at ¶ 4. In fact, there are some aspects of Nalge's narrow-mouth water bottle that are not user-friendly or utilitarian. For example, Nalge's narrow-mouth water bottle is relatively wide and does not easily fit into cup or bottle holders found in common places, such as automobiles, baby strollers, or bicycles. Riemann Decl., at ¶ 4.

Significantly, there are numerous third-party, alternative, competitive designs that are functionally equivalent to Nalge's mark. Riemann Decl., at ¶ 6. Indeed, Opposer offers alternative competitive designs. Riemann Decl., at ¶ 8, and Exhibit 14 attached thereto. These

⁴ At a minimum, the Morton-Norwich factors demonstrate that there are a number of factual issues that cannot be resolved on summary judgment.

alternative competitive designs are determinative of Opposer's Motion, because they unequivocally demonstrate that competitive bottles are not necessarily made in the form of Nalge's mark to accomplish their purpose. See Morton-Norwich, 671 F.2d at 1339; *citing* Marvel Co. v. Tullar Co., 125 F. 829, 830 (S.D.N.Y. 1903)(a mark is not functional if competitors can make products in other forms to accomplish the desired purpose). The following comments from the Morton-Norwich case, which immediately precede the court's decision that the mark in that case was not functional, are particularly relevant, and decisive:

In the first place, a molded plastic bottle can have an infinite variety of forms or designs and still function to hold liquid. No one form is necessary or appears to be 'superior.' Many bottles have necks, to be grasped for pouring or holding, and the necks likewise can be in a variety of forms. The PTO has not produced one iota of evidence to show that the shape of appellant's bottle was required to be as it is for any de facto functional reason, which might lead to an affirmative determination of de jure functionality. The evidence, consisting of competitor's molded plastic bottles for similar products, demonstrates that the same functions can be performed by a variety of other shapes with no sacrifice of any functional advantage. There is no necessity to copy appellant's trade dress to enjoy any of the functions of a spray top container.

Morton-Norwich, 671 F.2d at 1339.

Finally, the method for manufacturing Nalge's products bearing Nalge's mark is no cheaper or simpler than manufacturing a functionally equivalent drinking bottle made of the same material. Riemann Decl., at ¶ 9. Therefore, each of the Morton-Norwich factors weighs heavily in favor of a determination that Nalge's mark is not functional.

Third, Opposer's argument is based on several factually and legally incorrect, illogical assumptions. Opposer falsely attempts to create the impression that the question of functionality of Nalge's mark was "discussed" and resolved between the parties in discovery. (*See* Opposer's Motion, p. 7). Nothing could be further from the truth. The use of the term "discussed" suggests that there was a discourse between the parties. No such discourse occurred. In fact, Nalge found

Opposer's discovery responses completely unclear, incomplete or incomprehensible, which Nalge hopes will be resolved by its pending Motion to Compel or its Rule 56(f) Motion.

Moreover, Opposer's response to Interrogatory No. 11, which Opposer quoted in its Motion, is largely inadmissible as it is based on speculation, hearsay, and information for which Opposer has no personal knowledge. For example, Opposer has no personal knowledge regarding how Nalge designed the Nalge mark and how it selected the various features of the mark. Because Opposer did not serve any discovery in this opposition proceeding, Opposer's allegation of functionality is pure conjecture.

The Nalge mark is directed to the shape of the bottle shown on the drawing page of Application Serial No. 76/572,253 for *water bottles*, i.e., bottles that are used for *drinking*, classified by the USPTO in international class 21. Opposer repeatedly attempts to argue that Nalge's mark is functional based on Opposer's alleged use *in the lab* as a *laboratory* bottle. Therefore, Opposer incorrectly attempts to equate Nalge's mark (bottles for drinking, International class 21) with laboratory bottles (laboratory bottles, International class 10). The purpose and utilitarian aspects of Nalge's mark and the features thereof must be determined in relation to the goods claimed in the application. Thus, any and all reference by Opposer to laboratory bottles and the utilitarian features thereof, including reference to companies who provide laboratory bottles, such as Owens-Illinois, and Brockaway Glass, are irrelevant to the functionality, or lack thereof, of Nalge's mark. It appears, as best Nalge can determine despite receiving incomplete and inadequate discovery responses, that "Boston Round" bottles are used primarily for laboratory bottles.⁵ Nalge does not dispute the fact that a round bottle has been used in the laboratory industry for years. Nalge also does not claim exclusive rights to round bottles in the laboratory or drinking industries. It claims rights to the specific mark *as shown in*

⁵ In its discovery requests, Nalge asked Opposer to define "Boston Round," but Opposer did not give a clear answer.

its application, a design that is unique to the drinking water bottle industry. Therefore, Opposer's references to laboratory bottles and laboratory bottling companies do not eliminate the genuine issues of fact still pending in this opposition.

Opposer also erroneously refers to selected components of generally shaped bottles to cobble together some of the components of Nalge's mark. However, 37 C.F.R. § 2.52 expressly provides that "[t]he drawing depicts the mark sought to be registered." Thus, Nalge is not claiming trademark rights in *any* generally round water bottle with a narrow neck, but rather, is claiming trademark rights in the specific bottle shown on the drawing page of Application Serial No. 76/572,253. It is quite clear, and has been since the beginning, that Opposer has completely ignored Nalge's mark shown on the drawing page. Opposer continues to present examples of bottles having a different shape than Nalge's mark with differently shaped features from those on Nalge's mark.

Opposer also cobbles together various elements from utility patents in a failed attempt to argue that there are no genuine issues of fact as to the functionality of Nalge's mark. Opposer has essentially created a jigsaw puzzle of patent claims in an effort to support its position. Specifically, Opposer searched the patent database to find random statements and portions of statements to support its position in this motion. In doing so, Opposer violated black letter trademark law that "merely labeling each design feature as 'useful' or as 'serving a utilitarian purpose' cannot, as a matter of law, render the entire configuration de jure functional." In re Teledyne Indus., Inc., 696 F.2d 968, 971 (Fed. Cir. 1982). Considering the volume of patents available, one could easily find such evidence to support functionality of *any* feature of *any* configuration, product or otherwise, including the Chanel or Listerine bottles that Opposer concedes as being ornamental. (See Opposer's Motion, p. 6). The issue is whether Nalge's mark as a whole is functional. Morton-Norwich, 671 F.2d 1339 (the phrase "nonfunctional" means

“that the particular design of the *whole* assembly of those parts must be essential.”)(emphasis added). Nalge submits that Opposer's patent references are irrelevant, and that Opposer has failed to present any evidence on whether Nalge's mark as a whole is functional.

Disturbingly, Opposer has lifted these patent references completely out of context of the inventions claimed. In some cases, Opposer relies on an element shown in a patent that is not even claimed in the invention. For example, Opposer states that U.S. Patent No. 524,159 “*shows* a generally cylindrical container.” (See Opposer's Motion, p. 18). However, U.S. Patent No. 524,159 is for a “stopper or cover for the mouths of bottles,” and not a bottle. Moreover, Opposer provides general statements completely unsupported by any evidence. For example, Opposer states that “[i]n 1894, 112 years ago, glass bottles were *generally known* to be transparent,” and “it would *generally be understood* that the bottle bottom was circular and flat.” (See Opposer's Motion, p. 18). These statements are wholly unsupported by any evidence and only raise significant doubts as to Opposer's representations to the Board. Using the same creative liberty that Opposer has used in attempting to show that Nalge's mark is functional, the USPTO would never find a registerable configuration design ever again.

Opposer repeatedly claims that Nalge should not be allowed registration of its mark because it would prevent competition. This could not be further from the truth. First, as noted above, Opposer is apparently currently providing a similar water bottle product that has slightly different ornamental features. Riemann Decl., at ¶ 8, and Exhibit 14 attached thereto. Thus, Opposer's own product offering demonstrates that equally functional, yet ornamentally different water bottles can be provided to consumers. Opposer's own advertisements suggest that an equally functional bottle bearing a similar yet distinctive design with ornamentally different features from Nalge's mark can be manufactured for less than or equal to the costs of a bottle bearing Nalge's trademark. Riemann Decl., at ¶ 8, and Exhibit 14 attached thereto. It is clear

from Opposer's advertisements that Opposer, and others, can still compete with Nalge with a bottle having a different configuration.

Nalge also submits examples of other third-party water bottles, which appear to be equally functional to, if not more functionally advantageous than, its mark. Each of these examples has different ornamental features. Riemann Decl., at ¶ 7, and Exhibit 13 attached thereto. Moreover, the simple, clean-lined design of Nalge's mark does not necessarily reduce the costs of manufacturing. Nalge expects that the manufacturing costs to make ornamentally different water bottles are primarily the same if one is using the same materials as Nalge products. Riemann Decl., at ¶ 9. Manufacturing water bottles having Nalge's mark involves creating a mold by which many bottles having the same shape are made. These molds must be made regardless of the ornamental features on the water bottle. After the initial expense of creating molds, Nalge submits that the manufacturing costs for making multiple similar-shaped bottles would be substantially the same regardless of the individual features on a bottle. Riemann Decl., at ¶ 10. Nalge has also attached other third-party registrations and approved applications showing simple bottle designs. Riemann Decl., at ¶ 11, and Exhibit 15 attached thereto. Thus, Nalge submits that competition has remained despite the use of its clean-lined mark. In fact, since Nalge introduced its "narrow mouth" drinking bottle, competition in the water bottle industry has increased not decreased. Riemann Decl., at ¶ 12.

V. NALGE SEEKS ADDITIONAL DISCOVERY PURSUANT TO RULE 56(f)

As set forth in detail in Nalge's pending Motion to Compel, Opposer's answers to Nalge's discovery requests are inadequate, incomplete and in some instances, incomprehensible. Nalge requested information about Opposer's manufacturing costs. Nalge also requested Opposer to identify its marketing, advertising, and promotional materials for its water bottles that bear

Applicant's Bottle Configuration or a similar configuration. Opposer's marketing, advertising, and promotional materials may demonstrate that Opposer touts the aesthetic features of its water bottles, thereby undermining Opposer's argument that such features are functional. *See New England Butt Co. v. Int'l Trade Comm'n*, 756 F.2d 874, 878-879 (Fed. Cir. 1985)(evaluation of advertising brochures and catalogs necessary to determine if such materials promote utilitarian features, or whether nonfunctional features are emphasized). As yet another example, Nalge requested Opposer to identify the costs associated with the manufacture its products. Such costs are directly relevant to the issue of functionality in that they may reveal that Opposer's manufacturing is simpler and cheaper than that of Nalge. *See In re Morton-Norwich Products, Inc.*, 671 F. 2d 1332, 1341 (C.C.P.A. 1982)(In determining whether a container configuration is functional, the court noted that "[i]t is also significant that a particular design results from a comparatively simple or cheap method of manufacturing the article.")

In fact, much of the discovery Nalge requests seeks information relevant to and supportive of Nalge's position that its mark is not functional, and is therefore particularly relevant to Nalge's response to Opposer's Motion for Summary Judgment. Thus, Nalge requests that Opposer's Motion for Summary Judgment be suspended until Opposer provides adequate, complete answers to Nalge's discovery requests.

VI. CONCLUSION

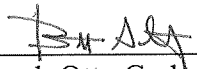
Opposer's Motion for Summary Judgment is untimely and should therefore not be considered. If the motion is considered, Nalge submits that Opposer failed to demonstrate the absence of genuine issues of material facts. As the Board is fully aware, when deciding a motion for summary judgment, the Board must determine whether there exists a genuine issue as to any material fact. A "material fact" is one that may affect the decision, whereby the finding of that fact is relevant and necessary to the proceedings. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,

248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). Nalge respectfully submits that Opposer has failed to carry its burden, and that there are numerous genuine issues of material fact that have yet to be resolved. Based upon the foregoing, Nalge respectfully request that the Board deny Opposer's Motion.

In the alternative, Nalge requests the opportunity to resolve its discovery issues with Opposer under Rule 56(f).

Respectfully submitted,

Dated: May 8, 2006

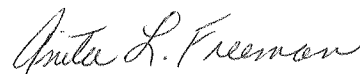


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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically to the United States Patent and Trademark Office, Trademark Trial and Appeal Board on the date shown below.

Date: May 8, 2006

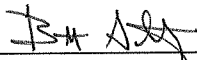


Anita L. Freeman

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPLICANT NALGE NUNC INTERNATIONAL CORPORATION'S BRIEF IN SUPPORT OF ITS OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT OF APPLICANT'S RULE 56 (f) MOTION FOR DISCOVERY NECESSARY TO RESPOND TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT** was served by e-file copy and by Federal Express, Two-Day Delivery, upon counsel for Opposer TriForest Enterprises, Inc., Clement Cheng, Esq., Law Offices of Clement Cheng, 17220 Newhope Street, Suite 127, Fountain Valley, California 92708, on this 8th day of May, 2006.

Dated: May 8, 2006



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_____)	

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DECLARATION OF SARAH OTTE GRABER

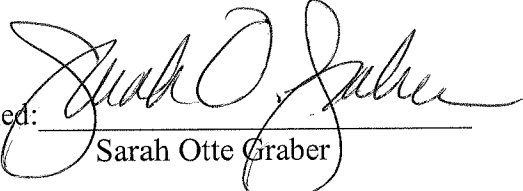
I, Sarah Otte Graber, declare and state as follows:

- 1) I am counsel for Applicant, Nalge Nunc International Corporation, in the above-entitled trademark opposition proceeding and an attorney at the law firm of Wood, Herron & Evans, L.L.P., 2700 Carew Tower, 441 Vine Street, Cincinnati, Ohio, 45202-2917. I am admitted to practice before the Supreme Court of Ohio. The purpose of this Declaration is to make of record various documents identified as Exhibits 11-12 and attached hereto and that I have obtained from the United States Patent and Trademark Office and from Opposer. Applicant relies upon Exhibits 11-12 attached hereto in support of its Opposition to Opposer's Motion for Summary Judgment.

- 2) Attached to this Declaration as Exhibit 11 is a true and accurate copy of the cover page of Opposer's Motion for Summary Judgment and the signature page of the same document, dated April 4, 2006.
- 3) Attached to this declaration as Exhibit 12 is a true and accurate copy of the records of the TTAB, demonstrating that Opposer's Motion for Summary Judgment was received by the TTAB on April 11, 2006.

The undersigned declares that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true, that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Date: 5/5/06

Signed: 
Sarah Otte Graber

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial No. 76/572,253
TTAB Opposition 91165809
For Plastic water bottle, sold empty, in IC 21
Published in the Official Gazette on (Date) 3/18/2005

TRIFOREST ENTERPRISES INCORPORATED
v.
NALGE NUNC INTERNATIONAL CORPORATION

**NOTICE OF
MOTION FOR SUMMARY JUDGMENT**

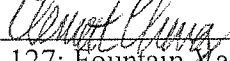
Mail Stop TTAB
Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Opposer: TriForest Enterprises, Inc.
17 Musick
Irvine, CA 92618

Applicant: Nalge Nunc International Corporation a Delaware Corp.
75 Panorama Creek Drive
Rochester, NY 14602-0365

TriForest Enterprises, Inc. (hereafter "TriForest") hereby gives notice of motion for summary judgment against Nalge Nunc International Corporation a Delaware Corp., (hereafter "NNI") pursuant to Fed. R. Civ. P. 56 on the basis that there is no genuine issue of material fact, and opposer is entitled to a judgment as a matter of law because expired utility patents and basic common sense shows that the asserted NNI trade dress is comprised of functional and commonplace features and therefore not registerable.

Respectfully submitted,

By Clement Cheng, Esq.  Date: 4/4/2006
17220 Newhope St., Suite 127; Fountain Valley, CA 92708

PROOF OF SERVICE

In the matter of trademark application Serial No. 76/572,253

I, the undersigned, declare I am over the age of 18 and not a party to this action. My business address is at 17220 Newhope St., Suite 127 Fountain Valley, CA 92708.

On APRIL 4TH, 2006, I served:

**NOTICE OF
MOTION FOR SUMMARY JUDGMENT**

By placing true copies thereof in a sealed envelope, addressed as follows to:

I copy sent to:

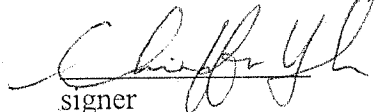
DONALD F. FREI
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CINCINNATI, OH 45202-2917
ATTORNEY FOR APPLICANT

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- ☐ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the offices of the addressee(s).
- ☒ BY MAIL: I am readily familiar with the practice of the office for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, correspondence is put in the office outgoing mail tray for collection and is deposited in the U.S. Mail that same day in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing shown on this proof of service.
- ☒ FEDERAL: I declare under penalty of perjury under the laws of the United States that the foregoing is true and that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.
- ☐ STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on APRIL 4TH, 2006, at Fountain Valley, California.


signer

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WOOD, HERRON & EVANS

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

em

Mailed: April 21, 2006

Opposition No. 91165809

TriForest Enterprises, Inc.

v.

Nalge Nunc International
Corporation

**Thomas W. Wellington,
Interlocutory Attorney:**

On April 10, 2006, applicant filed a motion to compel and a copy of a stipulate protective agreement.¹

On April 11, 2006, opposer filed a motion for summary judgment.

On April 12, 2006, applicant filed a stipulated request for the Board to suspend this proceeding pending disposition of both aforementioned motions. The stipulated request also seeks

¹ The stipulated protective agreement is noted. The parties are referred to TBMP § 416 (2d ed. rev. 2004) (Signature of Protective Order, Filing and Handling Confidential Materials With Board). The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing paragraphs (d) and (e) of 37 CFR § 2.27, which provide, in essence, that the file of a published application or issued registration, and all

rescheduling of the parties' trial periods upon disposition of the motions.

The parties' stipulated request for a suspension is granted to the extent proceedings herein are suspended pending disposition of the motion to compel filed and motion for summary judgment, except as discussed below. The parties should not file any paper which is not germane to either motion. See Trademark Rule 2.120(e)(2).

This suspension order does **not** toll the time for either party to respond to discovery requests which had been duly served prior to the filing of the motions, nor does it toll the time for a party to appear for a discovery deposition which had been duly noticed prior to the filing of the motions. See Id.

Finally, for sake of clarity, we advise the parties that because the motion to compel was filed prior to the motion for summary judgment it will not be construed as a motion under Federal Rule 56(f) [request for discovery to respond to summary judgment motion]. Accordingly, any Rule 56(f) motion must be separately filed. See TBMP § 528.06 (2d ed. rev. 2004).

The motions will be decided in due course.

* * *

proceedings relating thereto, should otherwise be available for public inspection.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<u>In re Application, Serial No. 76/572,253</u>)	
TriForest Enterprises, Inc.)	
	)	Opposition No. 91165809
Opposer,)	
v.)	
)	
Nalge Nunc International Corporation)	
)	
Applicant-Respondent.)	
_____)	

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DECLARATION OF DENISE RIEMANN, PHD, ESQ.

I, Denise Riemann, declare and state as follows:

- 1) I am Intellectual Property Counsel for Fisher Scientific International, Inc., the parent corporation of Applicant, Nalge Nunc International Corporation ("Nalge") and am familiar with the adoption, use and marketing of Nalge's intellectual property. I have been in my position with Applicant since October of 2001. The purpose of this Declaration is to make of record various documents identified as Exhibits 13- 15 and attached hereto and that I have obtained from the United States Patent and Trademark Office, that I personally obtained from the Internet, and from third parties. Applicant

relies upon Exhibits 13-15 attached hereto in support of its motion for summary judgment.

- 2) I am very familiar with Nalge's use of its trade dress, shown in U.S. Application Serial No. 76/572,253. Nalge has been manufacturing a "narrow-mouth" water bottle bearing this trade dress as a drinking bottle since at least April of 1992. Nalge has promoted its water bottles bearing its trade dress throughout the last 14 years. Consumers readily recognize Nalge's narrow-mouth water bottle design and expect a high quality water bottle product coming from Nalge.
- 3) Nalge has never sought a utility patent for its narrow-mouth water bottle, and to the best of my knowledge there is not a utility patent on Nalge's narrow-mouth water bottle design or a water bottle or drinking bottle product bearing all of the features of Nalge's trade dress.
- 4) There are some aspects of Nalge's narrow-mouth water bottle that are not user-friendly or utilitarian. For example, Nalge's narrow-mouth water bottle is relatively wide and does not easily fit into cup and bottle holders found in common places, such as automobiles, baby strollers or bicycles.
- 5) The features of Nalge's trade dress do not have any utilitarian purposes superior to other plastic water bottles.
- 6) There are numerous third-parties who offer for sale and sell alternative, competitive designs that are functionally equivalent to Nalge's mark.

- 7) Attached to this declaration as Exhibit 13 is a true and accurate copy of advertisements of third-parties who offer for sale and sell alternative, competitive designs that are functionally equivalent to Nalge's mark.
- 8) Attached to this declaration as Exhibit 14 is a true and accurate copy of advertisements of Opposer, who apparently also offers for sale and sells alternative, competitive designs that are functionally equivalent to Nalge's mark.
- 9) To the best of my belief and knowledge, the method for manufacturing Nalge's products bearing Nalge's mark is no cheaper or simpler than manufacturing a functionally equivalent drinking bottle made of the same material.
- 10) To the best of my belief and knowledge, manufacturing water bottles having Nalge's mark involves creating a mold by which many bottles having the same shape are made. These molds must be made regardless of the ornamental features on the water bottle. After the initial expense of creating molds, the manufacturing costs for making multiple similar-shaped bottles would be substantially the same regardless of the individual features on a bottle.
- 11) Attached hereto as Exhibit 15 are true and accurate copies of third-party U.S. design patents, U.S. trademark registrations, and approved U.S. trademark applications showing simple bottle designs that are competitive alternatives to Nalge's mark.
- 12) Since Nalge introduced its "narrow mouth" drinking bottle competition in the water bottle industry has increased not decreased.

The undersigned declares that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true, that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

Date: May 5, 2006

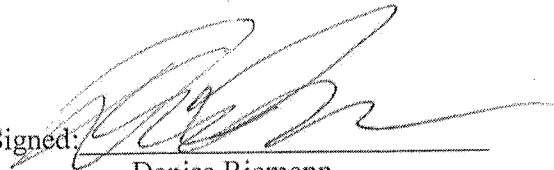
Signed: 
Denise Riemann



Exhibit 13-Opposition No. 91165809, TriForest Enterprises, Inc. v. Nalge Nunc International Corporation, offered by Nalge Nunc International Corporation

Home Page

Minimum order is \$250. Order total listed does not include any setup or freight charges. You will be contacted personally by phone, fax or email before your order is put into production to confirm all pricing and availability. Browse the special wholesale pricing we offer for great looking promotions. You will love our selection!! Thank you!

Discovery 32 Oz. Polycarbonate Sport Bottle

Item Number: IAXJD-EIRIV

Category: Bottles

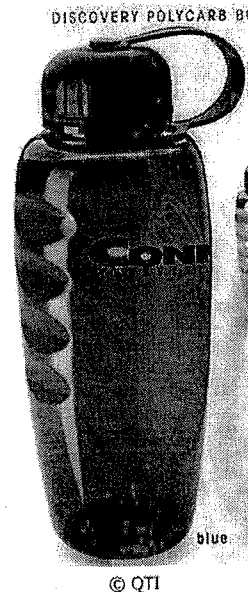
Description: Discovery, 32 Oz. Capacity, Polycarbonate, Plastic, Sport, Transparent, Screw On Off Top, Lid, Hinge Top, Finger Groove, 9-1/2"X3-1/2" Diameter

Colors: Transparent Red, Transparent Smoke Gray, Transparent Blue, Transparent Purple, Transparent Green, Black Lid

Themes: Beverage, Drinking, Sport, Outdoor

Packaging: Individual polybag

Production Time: Approx. 5 working days



Quantity:	150	250	500	1000	5000
Your Special Price:	\$4.99	\$4.52	\$4.90	\$4.47	\$4.79

Note: Additional charges may apply in some cases.

Your request must total a minimum of \$250 per order to qualify for our wholesale discounted pricing. Sorry, at these special prices, we cannot process any orders below this amount. Minimums listed do not apply if total is below \$250.

[REQUEST INFO](#)
[REQUEST QUOTE](#)
[PLACE ORDER](#)
[RETURN TO LIST](#)

The best way to get information on any item is to click the "Request More Info" button and fill out the shopping cart (Name, Phone & Fax Number, E-mail Address). This DOES NOT obligate you to purchase. We will contact you shortly after. If you do not hear from us in 48 hours, please call us to confirm at 401-841-5646.

If placing an order we will need artwork to begin. You may "attach" your ".eps/Illustrator" artwork file to your

32 oz. H2Go Polycarbonate Bottle

SKU: EX3350-3357



Description: These 32 oz. water bottles are made from su plastic and have a comfort grip shape. These for summer promotions. Add your organizati exposure.

Production Time: 14 days

Size: 9" x 3-5/8"

Imprint Area: 4-1/2 x 2-3/4 (one side only)

Features:

- Price includes one imprint color
- Available in aqua, blue, red, smoke, and lime
- Each bottle comes with a black loop top cap

PRICING INFO

	36	72	144	288	576
Product Base Price	\$5.29	\$4.29	\$3.29	\$3.29	\$3.29

#5190: The Journeyer 34 oz. Polycarbonate Bottle

- Giant 34 oz. capacity!
- Loop top design
- Matching color lids
- Measurement guide on back

We think you'll take one look at this great polycarbonate bottle and start thinking about how to use it for your next promotion. The Journeyer just invites a dramatic imprint on a beautiful color selection and the contoured design is perfect for comfort. Your lucky recipients will be anxious to hook the bottle onto belt or backpack and hit the trail. With a 34 ounce capacity, they'll be able to trek a long ways without a refill. Through it all, your logo will accompany them, reminding all of your services and generosity.

Item Number	72	144	288	596	1,008
5190	\$5.50	\$5.20	\$5.00	\$4.80	\$4.60

Set-up charge: \$45.00

Running charges: Price includes per piece running charge for one-color imprint on one or both sides

Dimensions: 8 3/4" high by 4" diameter (top) by 3 3/4" diameter (bottom)

Imprint area size: 1 1/8" high by 2 1/2" wide (on each side)

Color choices: Green (G), red (R), blue (B) or smoke (SM) with matching lids

Packaging: Individually polybagged; 24/13 lbs.

Production time: 10 to 15 working days

Rush service: Usually available (contact customer service)

Washing instructions: Hand washing only recommended

 **sportsbottleworld.com**

2616 Mesilla Street NE, Suite 1, Albuquerque, NM 87110

Telephone: (888) 321-3675 (toll free) or (505) 314-2977

Fax: (800) 809-8386 (toll free fax) or (505) 314-2982





COME VISIT
ELITE ENTERPRISE
COMPANY
BOOTH #5522

Elite Enterprise Company

Exhibit 14- Opposition No. 91165809, TriForest
Enterprises, Inc. v. Nalge Nunc International
Corporation, offered by Nalge Nunc
International Corporation



2166 Elite Competition Lexan Bottle

1000 ml/32 oz. Capacity 135 (g) unit weight
Bottle Imprint area 4"(w) x 4 3/4"(h)
Bottle color: blue, gray, purple, green

- ◆ Material: Virgin Polycarbonate Polymer
- ◆ Dimensions: 3 1/2 x 8 inches
- ◆ Wide-mouth style for mass water quench
- ◆ Imprinted milliliters and ounces for measurement
- ◆ Loop-Top: Lid is attached with loop so it can't be lost

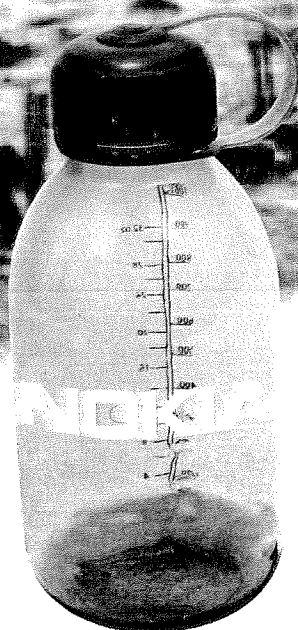
Price includes one color imprint, standard position as shown

48/144	145/288	289/624	625/1008	PQRS
\$7.00	\$6.27	\$5.50	\$4.77	

For each additional color add

\$2.45	\$2.15	\$1.85	\$1.55	
--------	--------	--------	--------	--

Screen charge: \$45(t) per color
 Reorder: \$39(t)



2260

1000 ml/32 oz. Capacity 135 (g) unit weight
Bottle Imprint area 4"(w) x 4 3/4"(h)
Bottle color: blue, orange, yellow, pink

- ◆ Material: Virgin Polycarbonate Polymer
- ◆ Dimensions: 3 3/4 x 8 1/2 inches
- ◆ Wide-mouth style for mass water quench
- ◆ Imprinted milliliters and ounces for measurement
- ◆ Loop-Top: Lid is attached with loop so it can't be lost

Price includes one color imprint, standard position as shown

48/144	145/288	289/624	625/1008	PQRS
\$7.00	\$6.27	\$5.50	\$4.77	

For each additional color add

\$2.45	\$2.15	\$1.85	\$1.55	
--------	--------	--------	--------	--

Screen charge: \$45(t) per color
 Reorder: \$39(t)

2366 Deluxe Handy Lexan Bottle

600 ml/18 oz. Capacity 90 (g) unit weight
Bottle Imprint area 3"(w) x 3"(h)
Bottle color: gray

- ◆ Material: Virgin Polycarbonate Polymer
- ◆ Dimensions: 3 x 6 3/4 inches
- ◆ Wide-mouth style for mass water-quench
- ◆ Imprinted milliliters and ounces for measurement
- ◆ Loop-Top: Lid is attached with loop so it can't be lost

Price includes one color imprint, standard position as shown

48/144	145/288	289/624	625/1008
\$6.60	\$5.91	\$5.08	\$4.38

For each additional color add

\$2.45	\$2.15	\$1.85	\$1.55
--------	--------	--------	--------

Screen charge: \$45(t) per color
 Reorder: \$39(t)



2367 Deluxe Non-Slip Lexan Bottle

1000 ml/32 oz. Capacity 130 (g) unit weight
Bottle Imprint area 4"(w) x 1 1/2"(h)
Bottle color: blue

- ◆ Material: Virgin Polycarbonate Polymer
- ◆ Dimensions: 3 1/2 x 8 inches
- ◆ Wide-mouth style for mass water-quench
- ◆ Imprinted milliliters and ounces for measurement
- ◆ Loop-Top: Lid is attached with loop so it can't be lost

Price includes one color imprint, standard position as shown

48/144	145/288	289/624	625/1008	PQRS
\$7.00	\$6.27	\$5.50	\$4.77	

For each additional color add

\$2.45	\$2.15	\$1.85	\$1.55
--------	--------	--------	--------

Screen charge: \$45(t) per color
 Reorder: \$39(t)



TRIFOREST
TriForest Enterprises, Inc.

9700 Series
26oz New crystal cut

9605 Series
16oz narrow mouth

9600 Series
32oz narrow mouth

9404 Series
12oz wide mouth

9505 Series
17oz swirl wide mouth

9500 Series
34oz swirl wide mouth

9405 Series
16oz 3-strip wide mouth

9400 Series
32oz 3-strip wide mouth

9 colors to choose from.

purple orange green navy clear red yellow pink blue

www.triforest.com

Custom Bottle Available

TriForest Enterprises, Original Manufacturer and Developer of **LEXAN®** Labware and Outdoor Products is celebrating its ASI membership by offering all ASI members an Introductory Offer. After 4 decades of private labeling, **TriForest** has started its own direct sales channel.

TriForest Outdoor products are certified safe, non leaching, and are made with genuine Medical Grade **LEXAN®** that is optimal for all hydration liquids stored or consumed at any temperature.

Avoid the copy cats and ask for the *Original Lexan Bottle* available from **TriForest**.

Choose from a broad selection of GE - **LEXAN®** Polycarbonate Water Bottles designed to suit discriminating outdoor enthusiasts.

STYLES: As listed below... Additional colors available.

PRICE AS LOW AS: \$2.10 including single color custom logo screen print**

**MENTION THIS AD AND RECEIVE AN ADDITIONAL 10% OFF
OUR ALREADY LOW PRICE ON YOUR ORDERS.**

ASI asi/92047

REQUEST: Information Catalog Samples Forward to a Colleague



US00D48992S

(12) **United States Design Patent** (10) Patent No.: **US D489,992 S**
Brauner et al. (45) Date of Patent: **** *May 18, 2004**

(54) **BOTTLE**

(75) Inventors: **Arne H. Brauner**, Minnetonka, MN
(US); **Karen E. McClure**, Plymouth,
MN (US)

(73) Assignee: **8th Continent, LLC**, Minnetonka, MN
(US)

(*) Notice: This patent is subject to a terminal disclaimer.

(**) Term: **14 Years**

(21) Appl. No.: **29/154,182**

(22) Filed: **Jan. 18, 2002**

(51) LOC (7) Cl. **09-01**

(52) U.S. Cl. **D9/539**

(58) Field of Search D9/500, 502, 503,
D9/519, 530, 537, 549, 556, 557, 559,
574, 499; 206/527; 215/200, 235, 316,
329, 400, 382; 220/200, 260, 288, 289,
890

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Primary Examiner—Philip S. Hyder

Assistant Examiner—Daniel Bui

(74) *Attorney, Agent, or Firm*—Schwegman, Lundberg,
Woessner & Kluth, P.A.

(57) **CLAIM**

The ornamental design for a bottle, as shown and described.

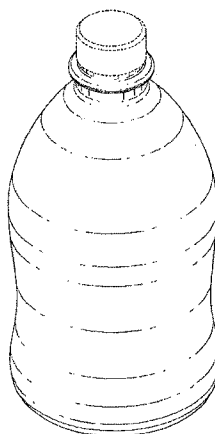
DESCRIPTION

FIG. 1 is a front isometric of a bottle in accordance with the invention.

FIG. 2 is a front elevation of the bottle of FIG. 1; and,
FIG. 3 is a top plan of the bottle of FIG. 1.

The sides that cannot be seen in the Figures are identical to those shown in the drawing. The bottom does not form a part of the design.

1 Claim, 3 Drawing Sheets



US D489,992 S

Page 2

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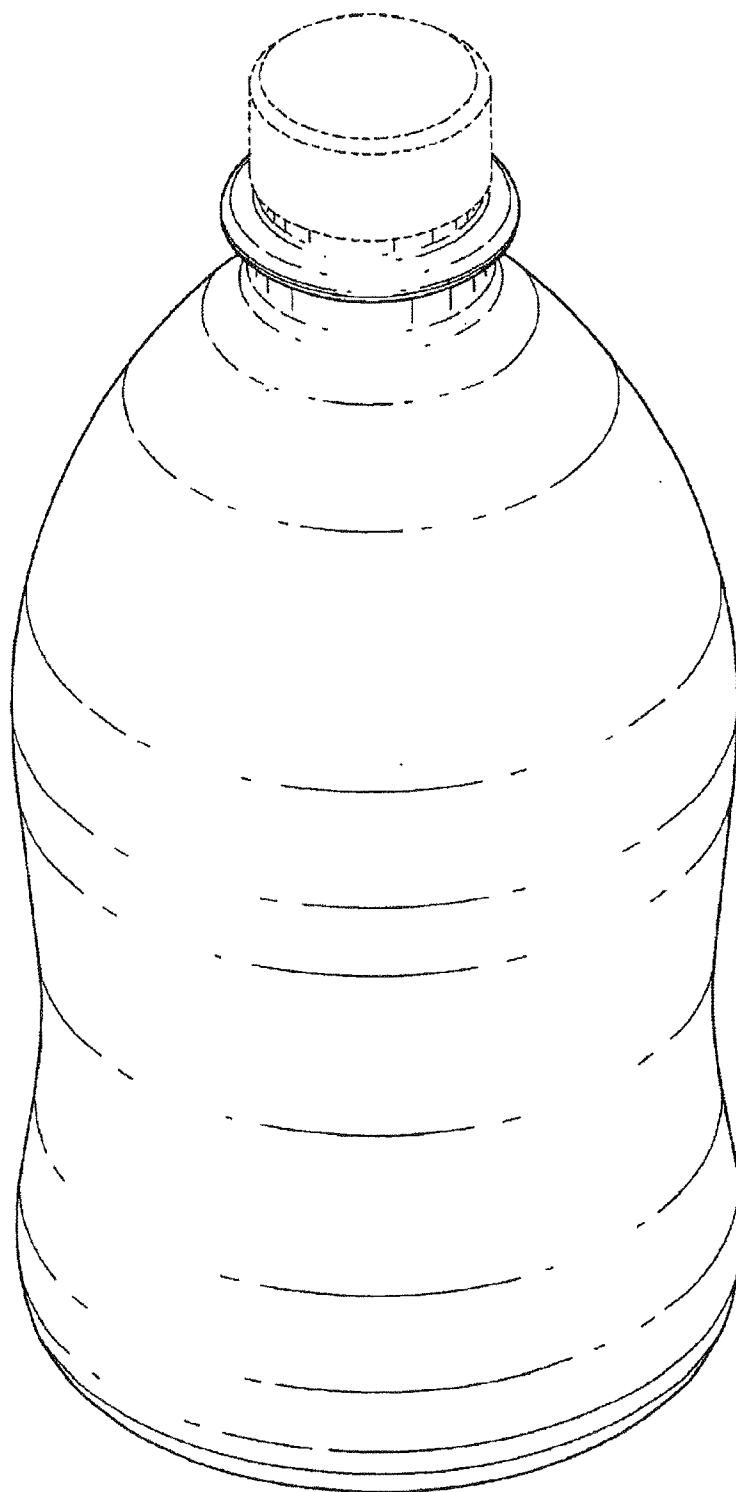


Fig. 1

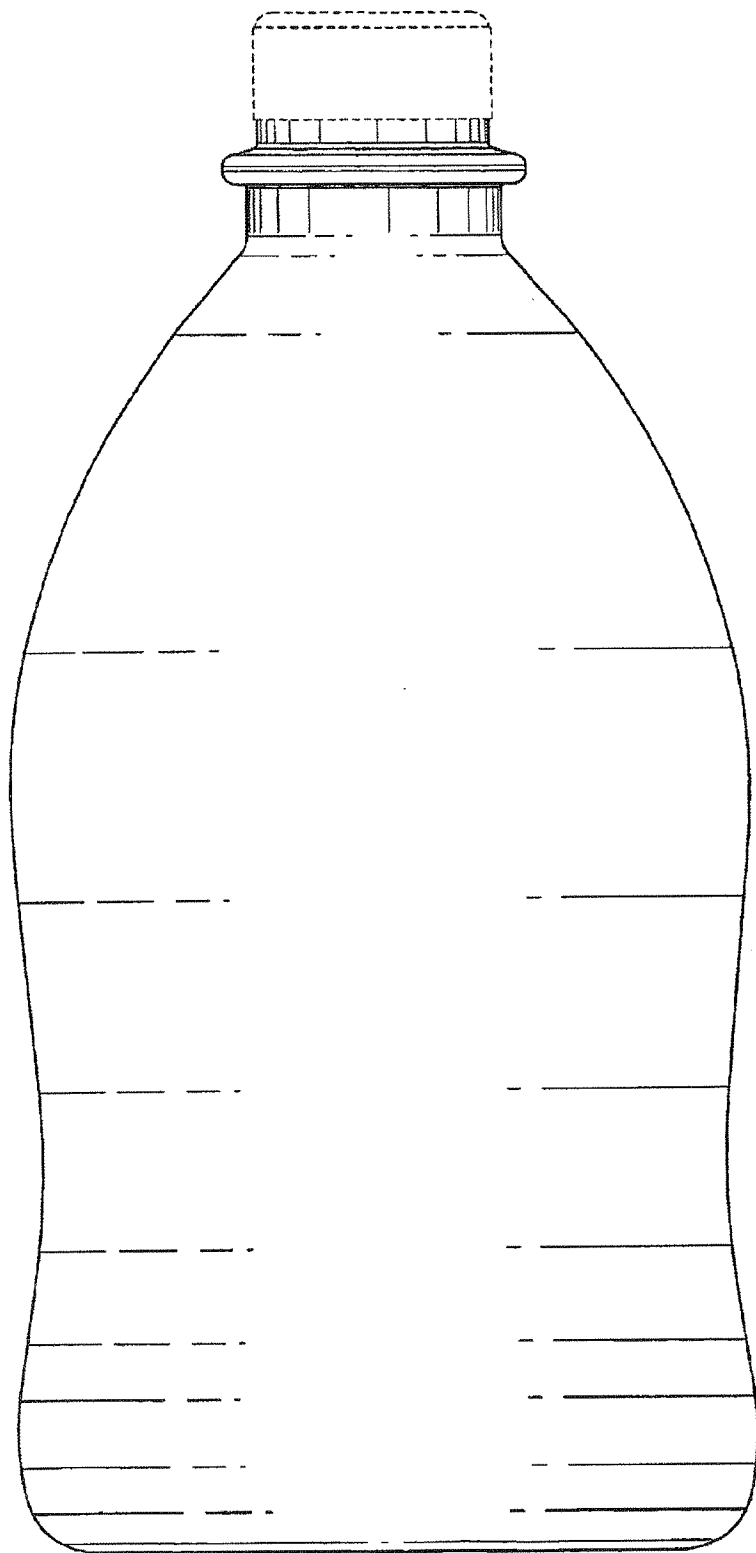


Fig. 2

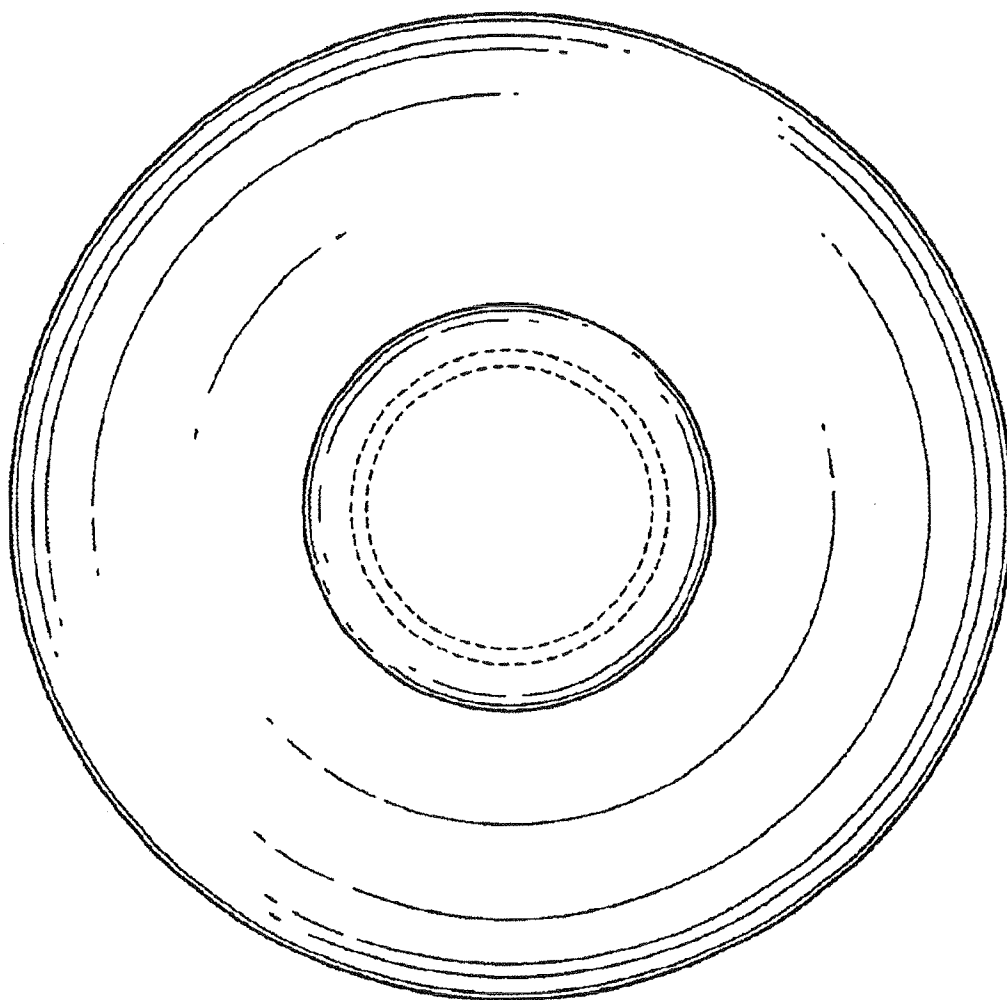


Fig. 3

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : Des. 489,992 S
DATED : May 18, 2004
INVENTOR(S) : Brauner et al.

Page 1 of 1

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Title page,
Item [57], **CLAIM,**
Line 1, delete "bottle," and insert -- Bottle --, therefor.
DESCRIPTION,
Line 3, delete "; and," and insert -- . --, therefor.

Signed and Sealed this

Fifth Day of October, 2004

A handwritten signature in black ink, reading "Jon W. Dudas". The signature is stylized, with a large loop for the "J" and a cursive "Dudas".

JON W. DUDAS
Director of the United States Patent and Trademark Office



US00D353771S

United States Patent [19]

Klitsner

[11] Patent Number: **Des. 353,771**

[45] Date of Patent: **** Dec. 27, 1994**

[54] **BOTTLE**

[75] Inventor: **Daniel Klitsner**, Oakland, Calif.

[73] Assignee: **Golden Brand Bottling Co., Inc.**, San Francisco, Calif.

[**] Term: **14 Years**

[21] Appl. No.: **7,535**

[22] Filed: **Apr. 26, 1993**

[52] U.S. Cl. **D9/500; D9/503**

[58] Field of Search **D9/500, 503, 504, 505, D9/558, 545; 215/1 R, 1 C**

[56] **References Cited**

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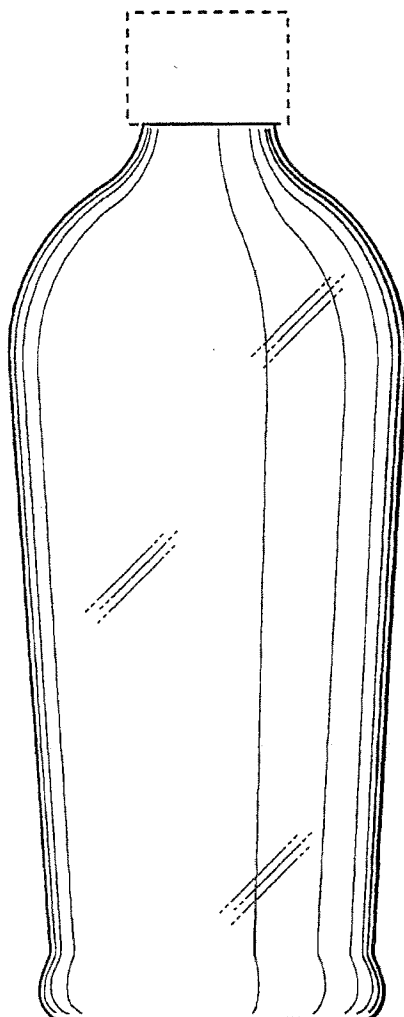
Primary Examiner—Lucy J. Lieberman
Attorney, Agent, or Firm—Owen, Wickersham & Erickson

[57] **CLAIM**

The ornamental design for the bottle, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of my new design;
FIG. 2 is a side elevational view thereof and is the same from all sides as it is symmetrical about its central axis;
FIG. 3 is a top view thereof; and,
FIG. 4 is a bottom view thereof.



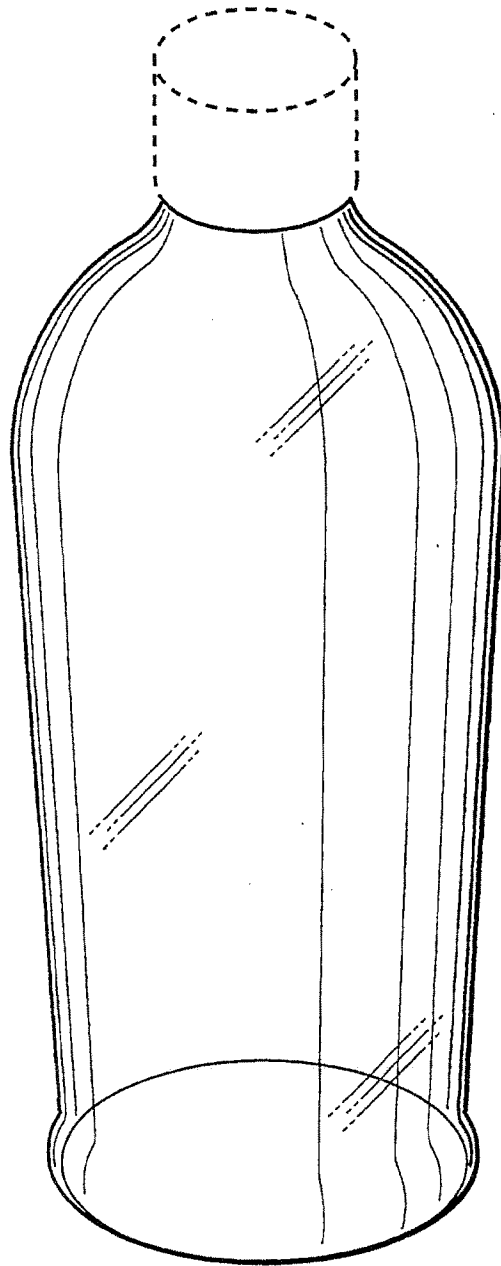


FIG._1

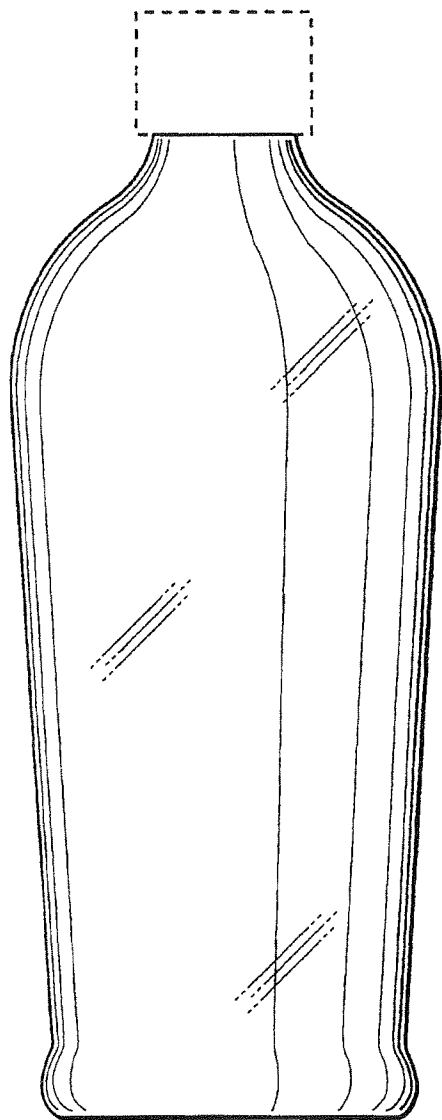


FIG._2

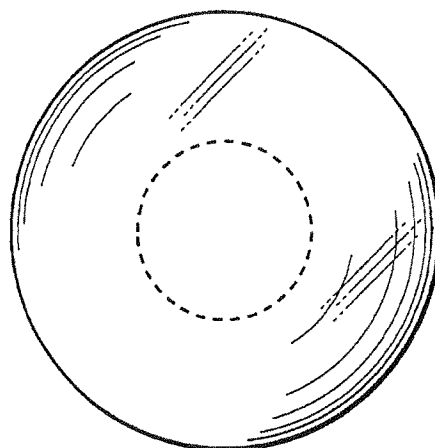


FIG._3

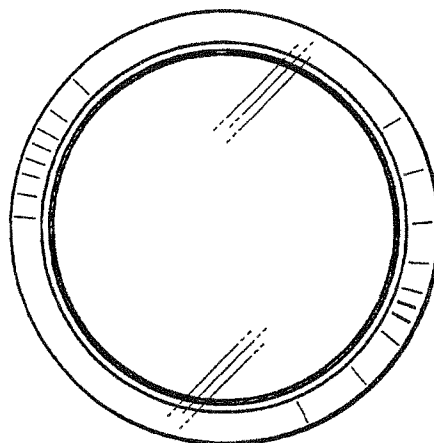


FIG._4



US00D461410S

(12) **United States Design Patent** (10) **Patent No.: US D461,410 S**
Zutler (45) **Date of Patent: ** *Aug. 13, 2002**

(54) **BOTTLE**

(76) Inventor: **David M. Zutler**, P.O. Box 2812,
Telluride, CO (US) 81435

(*) Notice: This patent is subject to a terminal disclaimer.

(**) Term: **14 Years**

(21) Appl. No.: **29/136,537**

(22) Filed: **Jan. 31, 2001**

(51) **LOC (7) Cl. 09-01**

(52) **U.S. Cl. D9/500**

(58) **Field of Search D9/300, 500, 503,**
D9/505, 516, 520, 537, 539, 545, 549,
558, 571, 574, 502; 215/381-385, 396,
398, 400, 10, 6

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D341,205 S * 11/1993 Greenley D9/500 X
D354,228 S * 1/1995 Boisset D9/503
D402,893 S * 12/1998 Monaghan D9/500
D414,111 S * 9/1999 Herrmann D9/503
D416,800 S * 11/1999 Herrmann D9/500

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Primary Examiner—Ted Shooman

Assistant Examiner—Carol Rademaker

(74) *Attorney, Agent, or Firm*—Sheridan Ross P.C.

(57) **CLAIM**

The ornamental design for a bottle, as shown and described.

DESCRIPTION

FIG. 1 is a front elevation view of a bottle, showing my new design;

FIG. 2 is a side view of the bottle illustrated in FIG. 1;

FIG. 3 is a side view of the bottle illustrated in FIG. 1;

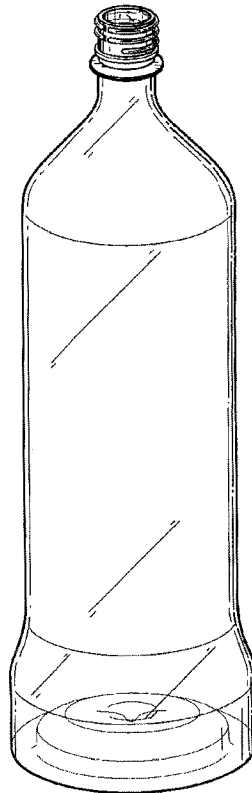
FIG. 4 is a side view of the bottle illustrated in FIG. 1;

FIG. 5 is a side view of the bottle illustrated in FIG. 1;

FIG. 6 is a top plan view of the bottle illustrated in FIG. 1; and,

FIG. 7 is a bottom plan view of the bottle illustrated in FIG. 1.

1 Claim, 4 Drawing Sheets



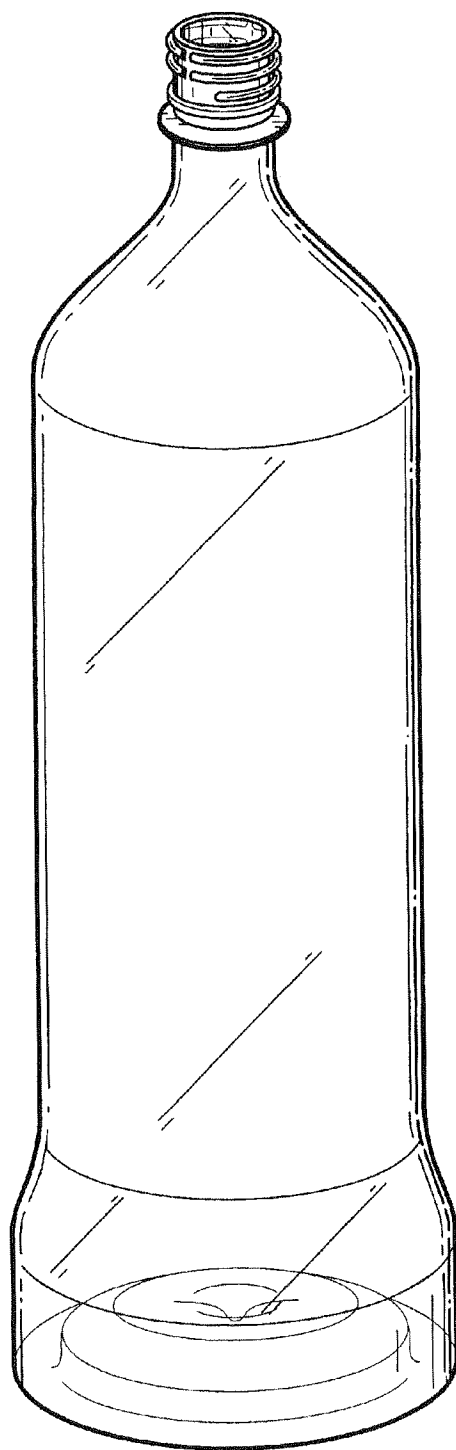


FIG.1

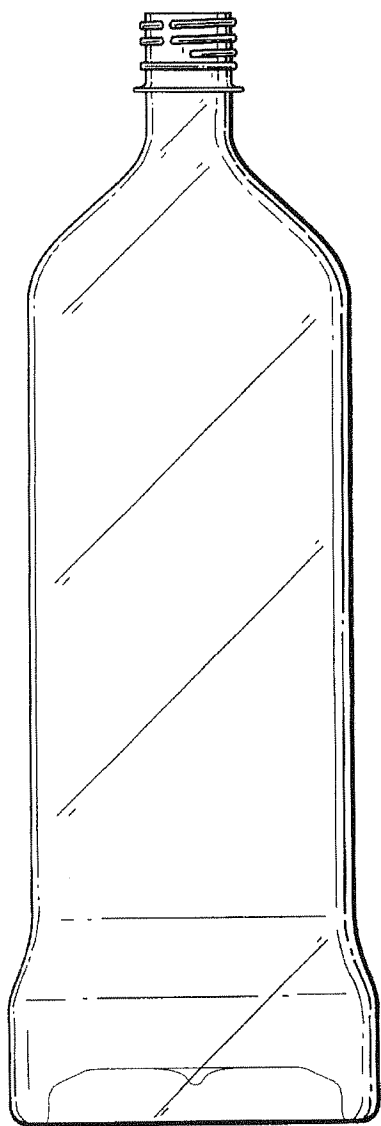


FIG.2

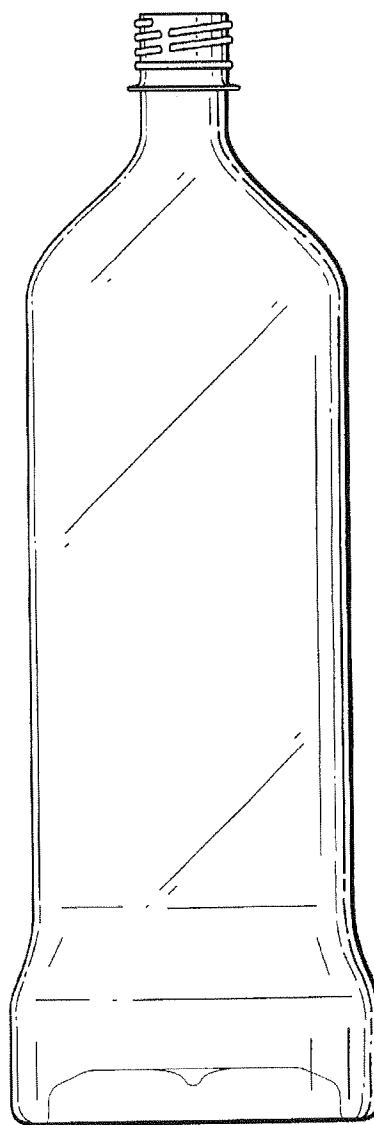


FIG.3

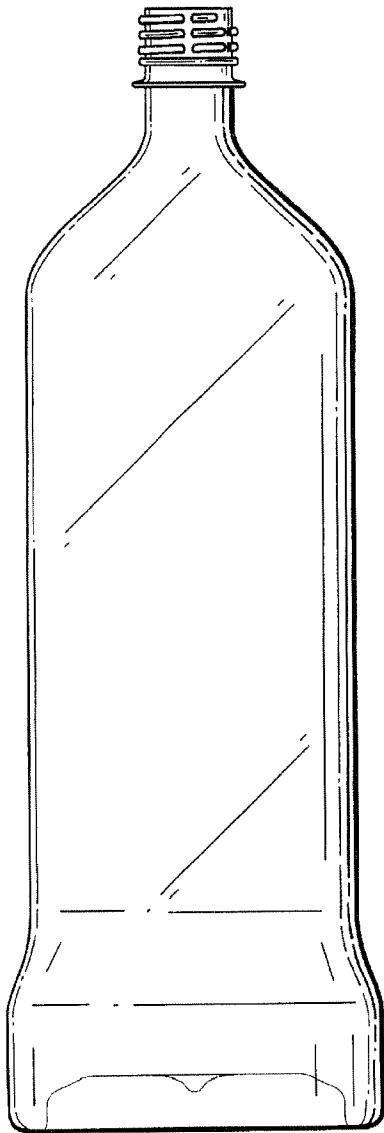


FIG. 4

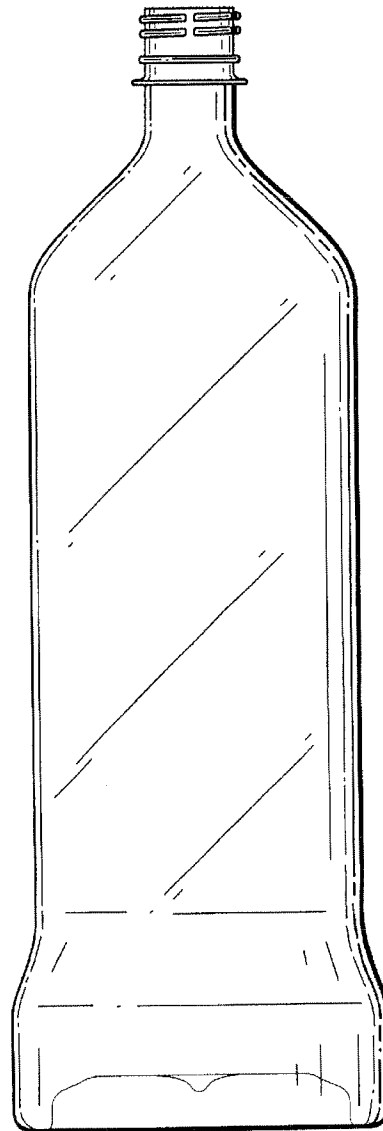


FIG. 5

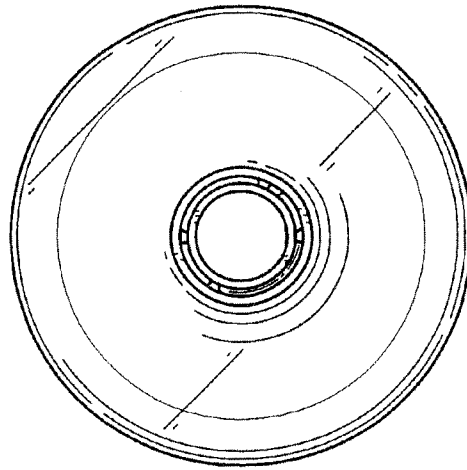


FIG. 6

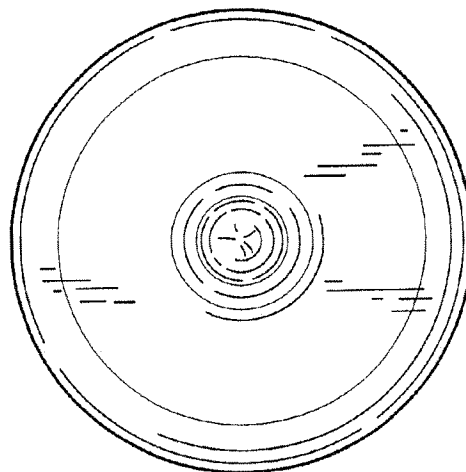


FIG. 7



US00D402893S

United States Patent [19]**Monaghan**[11] **Patent Number:** **Des. 402,893**[45] **Date of Patent:** ****Dec. 22, 1998**[54] **BOTTLE**[75] **Inventor:** **Robert Monaghan**, London, United Kingdom[73] **Assignee:** **Reckitt & Colman Products Limited**, London, United Kingdom[**] **Term:** **14 Years**[21] **Appl. No.:** **65,209**[22] **Filed:** **Jan. 23, 1997**[30] **Foreign Application Priority Data**

Aug. 10, 1996	[GB]	United Kingdom	2058400
Aug. 10, 1996	[GB]	United Kingdom	2058401

[51] **LOC (6) Cl.** **09-01**[52] **U.S. Cl.** **D9/500**[58] **Field of Search** D9/500, 503, 504, D9/505, 545, 539, 538; 215/382, 383, 384[56] **References Cited****U.S. PATENT DOCUMENTS**

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D. 295,372	4/1988	Klette et al.	D9/500
D. 353,771	12/1994	Klitsner	D9/500
3,331,521	7/1967	Paige	215/382

Primary Examiner—Lucy Lieberman
Attorney, Agent, or Firm—Fish & Richardson P.C.

[57] **CLAIM**

The ornamental design for a bottle, as shown and described.

DESCRIPTION

FIG. 1 is a top, front perspective view of a bottle showing my new design;

FIG. 2 is a bottom plan view thereof;

FIG. 3 is a left side elevation thereof, the rear and right side are the same except for the conventional screw threading on the neck;

FIG. 4 is a top plan view thereof;

FIG. 5 is a top, front perspective view of a second embodiment of the bottle;

FIG. 6 is a bottom plan view thereof;

FIG. 7 is a left side elevation thereof, the rear and right side are the same except for the conventional screw threading on the neck; and,

FIG. 8 is a top plan view thereof.

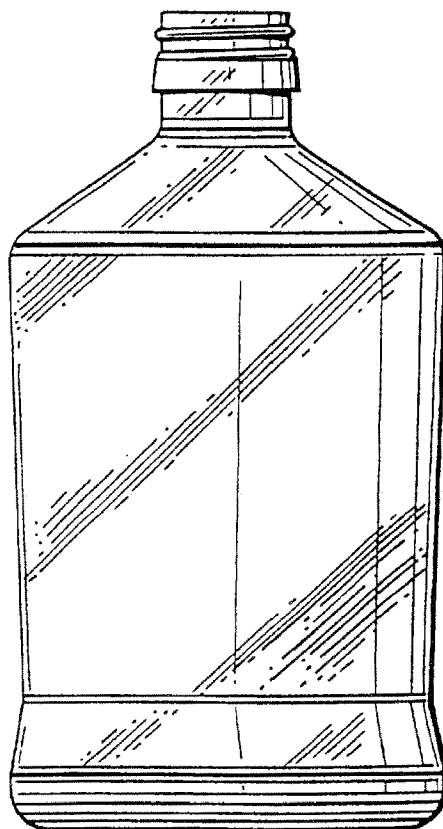
1 Claim, 4 Drawing Sheets

FIG. 1

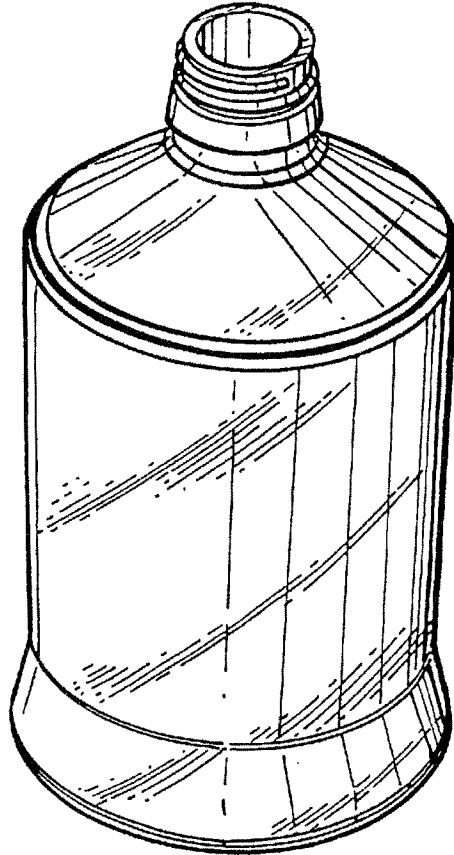


FIG. 2

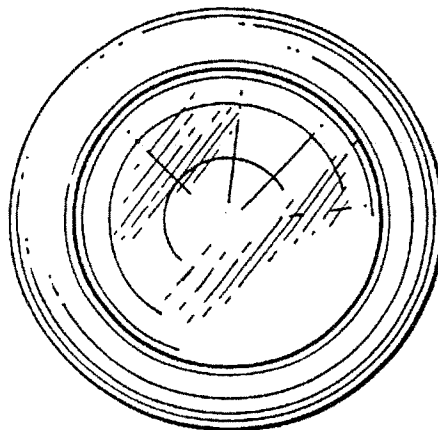


FIG. 3

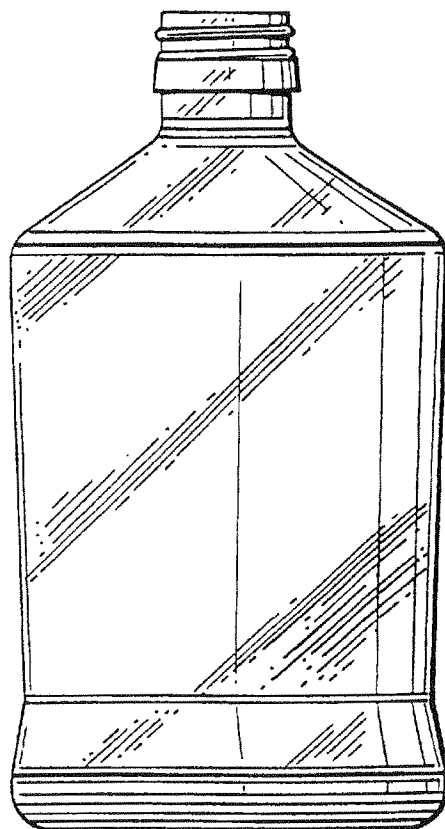


FIG. 4

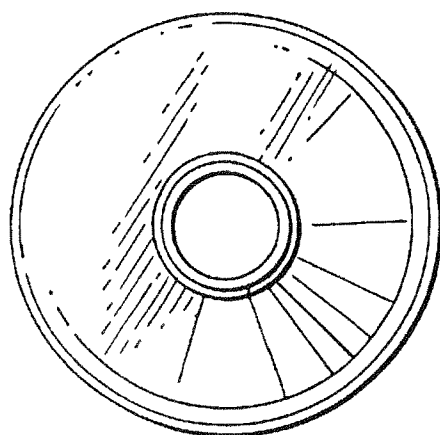


FIG. 5

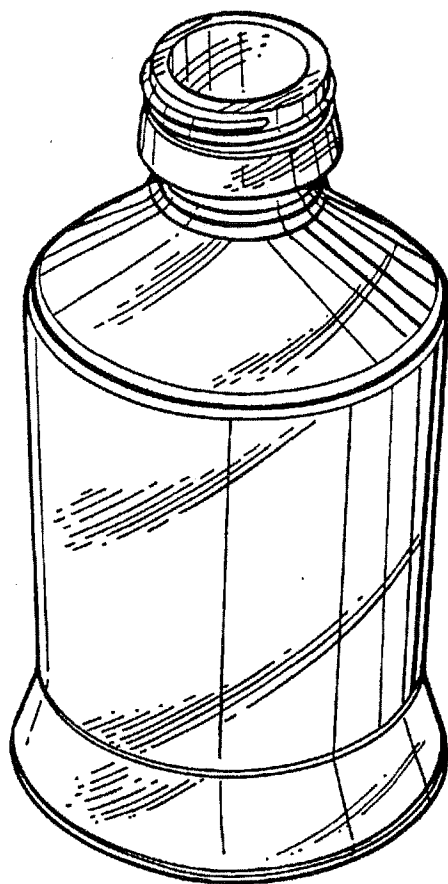


FIG. 6

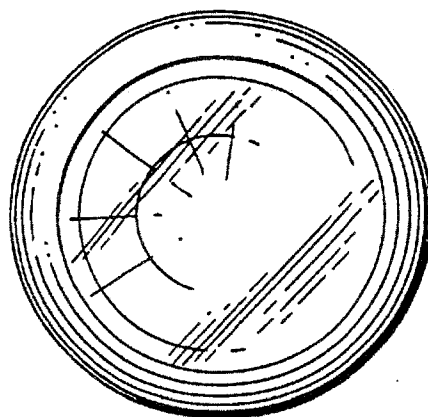


FIG. 7

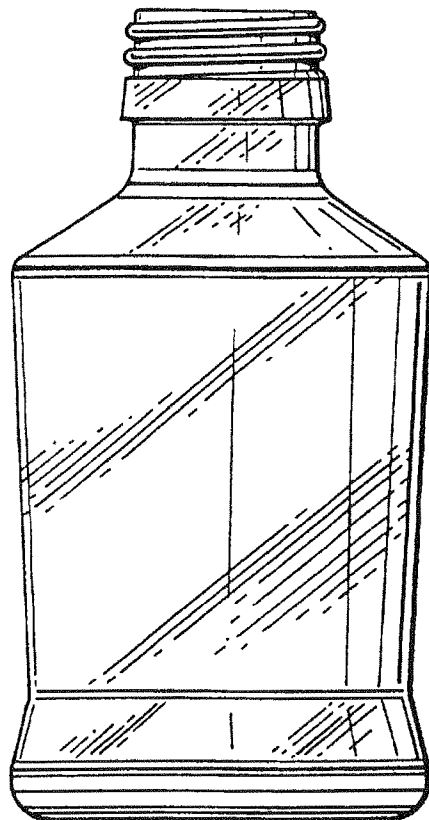
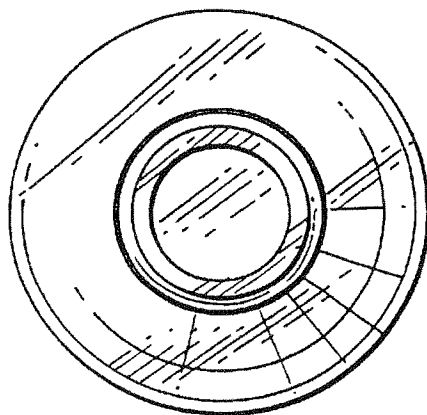


FIG. 8





US00D352004S

United States Patent [19][11] **Patent Number: Des. 352,004****Bikoff et al.**[45] **Date of Patent: ** Nov. 1, 1994**[54] **BOTTLE AND CAP**4,416,400 11/1983 Dougherty, Sr. 222/420
4,469,235 9/1984 Parker 215/295[76] Inventors: **J. Darius Bikoff**, Sousa Dr., Sands
Point, N.Y. 11050; **Philippe Starck**, 3
Rue de la Roquette, 75011, Paris,
France**OTHER PUBLICATIONS**Modern Packaging Encyclopedia, 1970 Issue, p. 298,
"Pull'n Push" closure 26-P200.
Aerosol Age, Jun. 1983, p. 24, Aerosol containers, bot-
tom left photo.[**] Term: **14 Years***Primary Examiner*—Theodore M. Shooman[21] Appl. No.: **607,873***Assistant Examiner*—Lucy Lieberman[22] Filed: **Nov. 1, 1990***Attorney, Agent, or Firm*—Darby & Darby[52] U.S. Cl. **D9/503; D9/443;**
D9/447[57] **CLAIM**[58] **Field of Search** D9/500-505,
D9/558, 300, 338, 435, 443, 447, 449, 436;
215/1 R, 1 C, 295; 222/525, 522, 420The ornamental design for a bottle and cap, as shown
and described.**DESCRIPTION**[56] **References Cited****U.S. PATENT DOCUMENTS**D. 261,992 11/1981 Tuthill et al. D9/449
D. 277,459 2/1985 Baum et al. D9/443
D. 277,736 2/1985 Long D9/443
D. 304,683 11/1989 Hofer D9/556 X
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3,599,845 8/1971 Miller 222/525
3,926,324 12/1975 Zavasnik 215/1 C
4,330,066 5/1982 Berliner 215/1 CFIG. 1 is a top perspective view of my new design;
FIG. 2 is a front elevation thereof, the rear elevation is
the same;

FIG. 3 is a top plan view thereof;

FIG. 4 is a bottom plan view thereof;

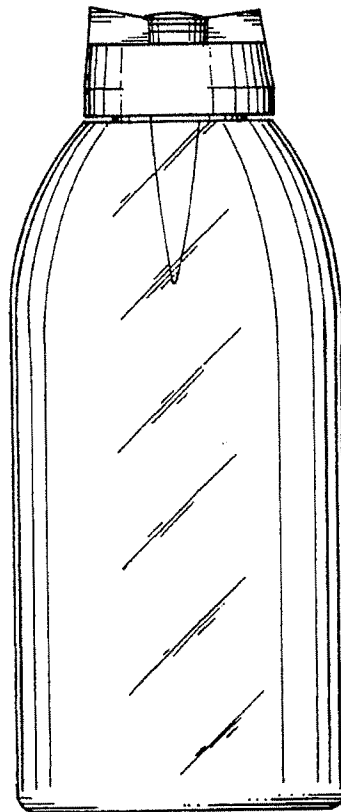
FIG. 5 is a right side elevation view, the left elevation
side-view being a mirror image of the right side; and,
FIG. 6 is a front elevation of a second embodiment of
the bottle and cap, the second embodiment is the same
as the first embodiment except that the bottle is trans-
parent, revealing a symmetrically conical flow guide.

FIG. 1

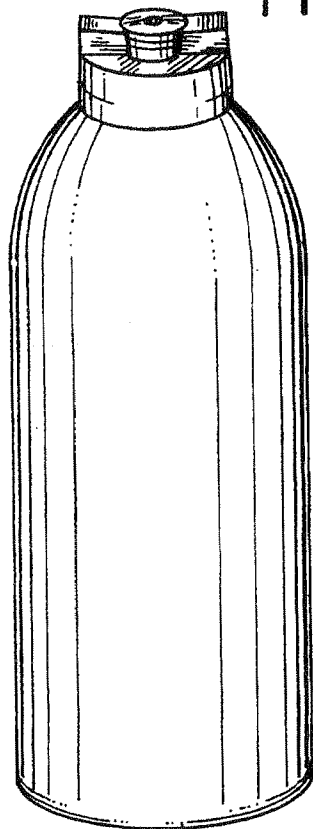


FIG. 2

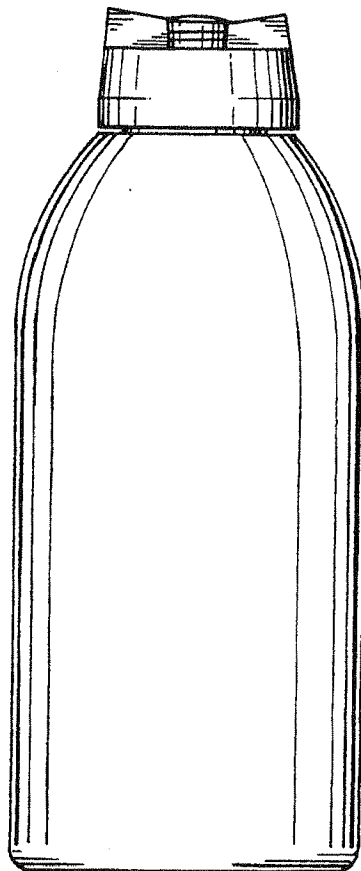


FIG. 3

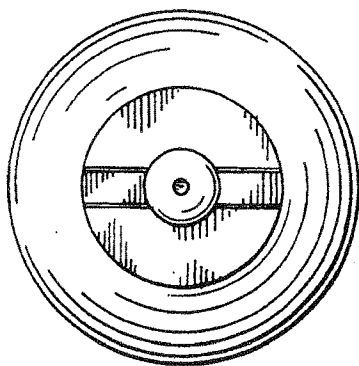


FIG. 4

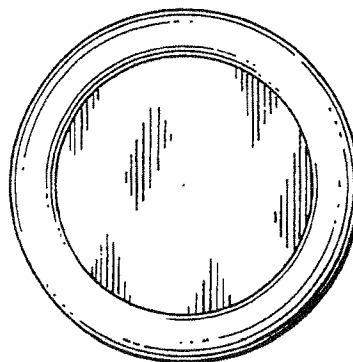


FIG. 5

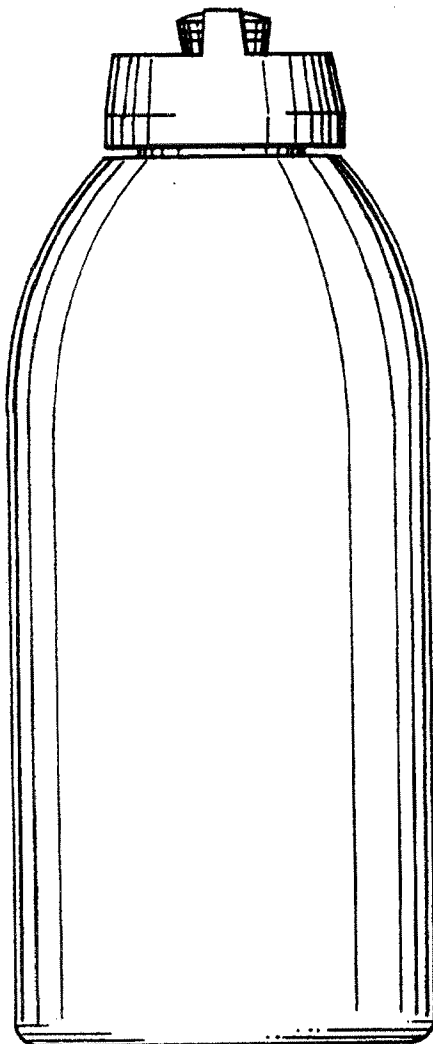
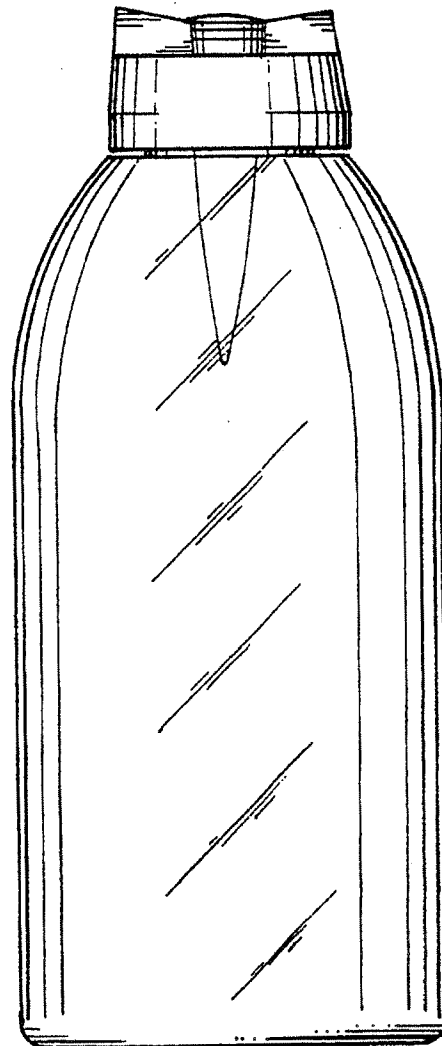


FIG. 6





US00D489620S

(12) **United States Design Patent**
Goodell et al.

(10) Patent No.: **US D489,620 S**
(45) Date of Patent: **** May 11, 2004**

(54) **BOTTLE**

(76) Inventors: **Bartlett Goodell**, 391 Rock Rd., Glen
Rock, NJ (US) 07452; **Michael**
Hughes, 3 Hampton Hills Dr., Goshen,
NY (US) 10924

(**) Term: **14 Years**

(21) Appl. No.: **29/172,245**

(22) Filed: **Dec. 9, 2002**

(51) **LOC (7) Cl.** **09-01**

(52) **U.S. Cl.** **D9/503**

(58) **Field of Search** D9/500, 502-504,
D9/516, 530, 537-539, 557-558; 215/381-384,
396, 398, 400; 220/660, 669, 675; 222/210,
212-213

(56) **References Cited**

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* cited by examiner

Primary Examiner—Mitchell Siegel

Assistant Examiner—Carol Rademaker

(57)

CLAIM

The ornamental design for a bottle, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view of our bottle;
FIG. 2 is a front elevational view of our bottle;
FIG. 3 is a top plan view of our bottle; and,
FIG. 4 is a bottom plan view of our bottle.

1 Claim, 3 Drawing Sheets

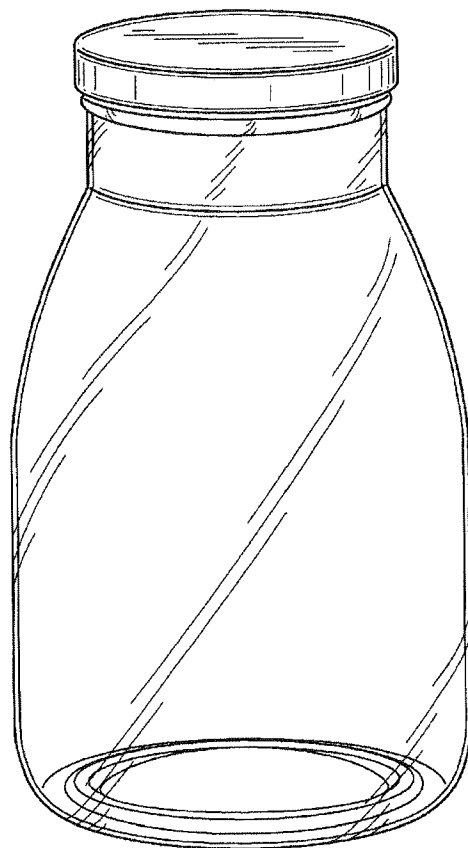


FIG. 1

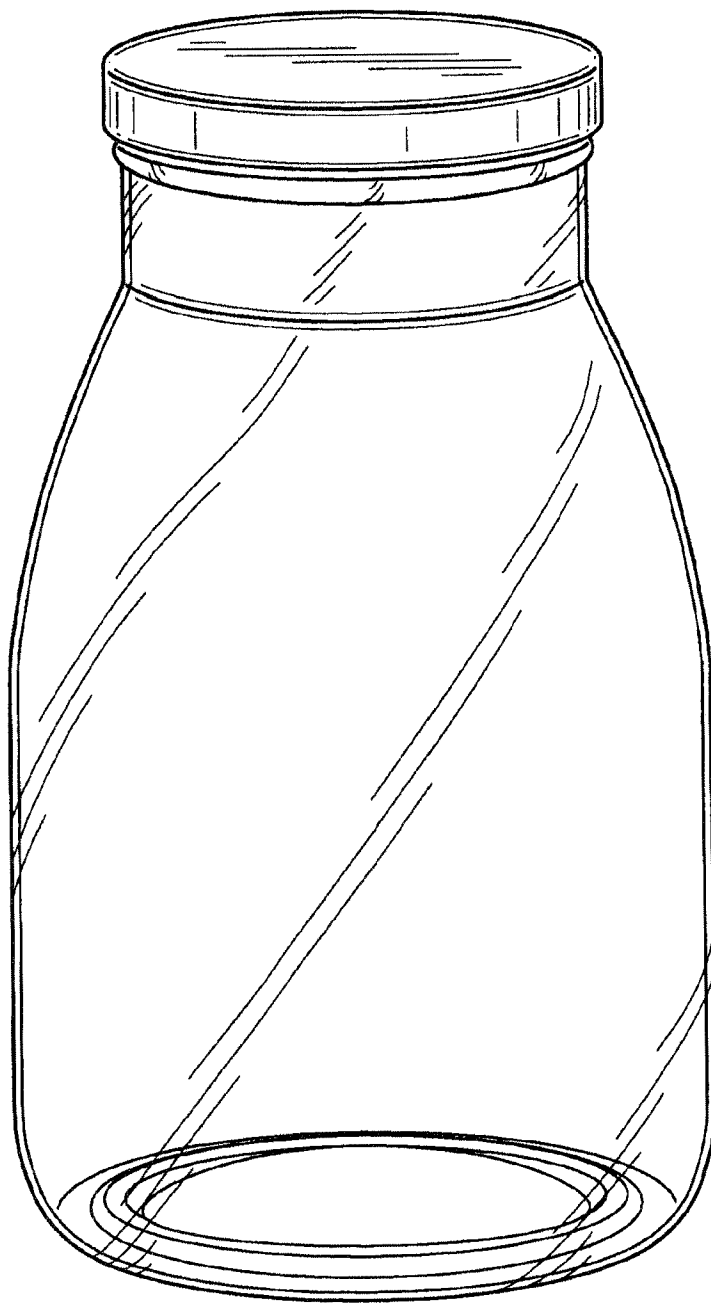


FIG. 2

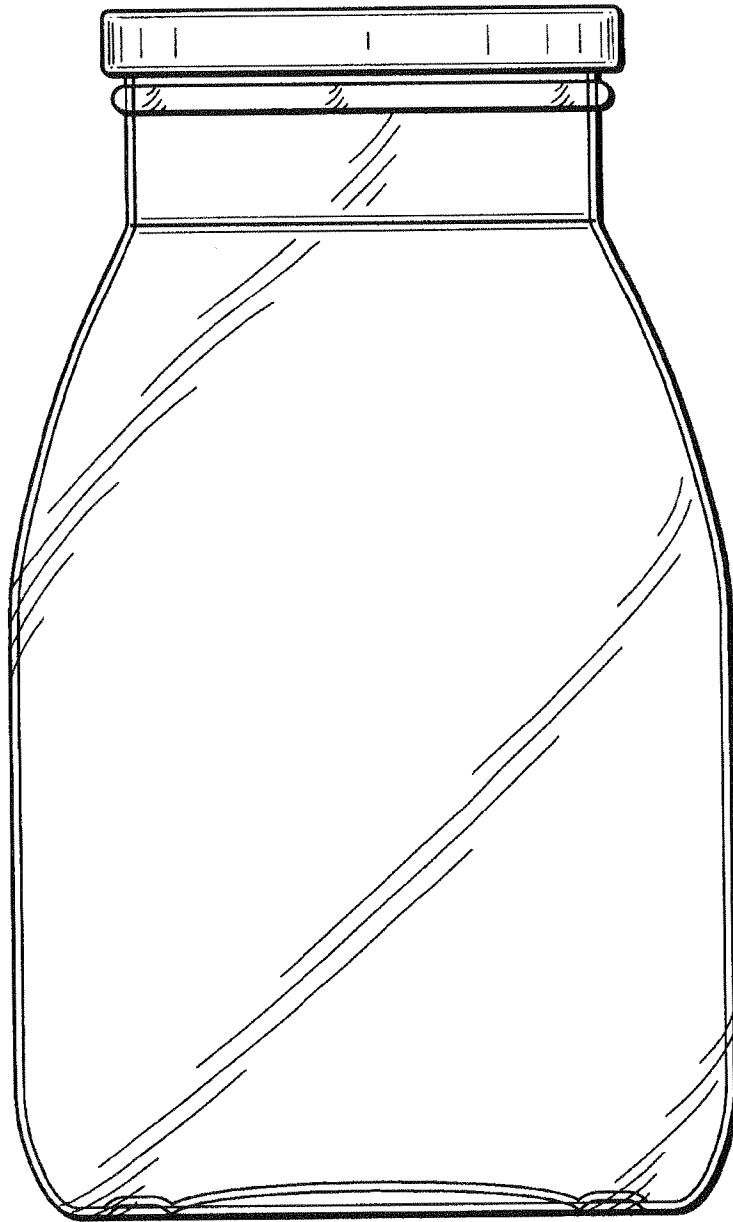


FIG. 3

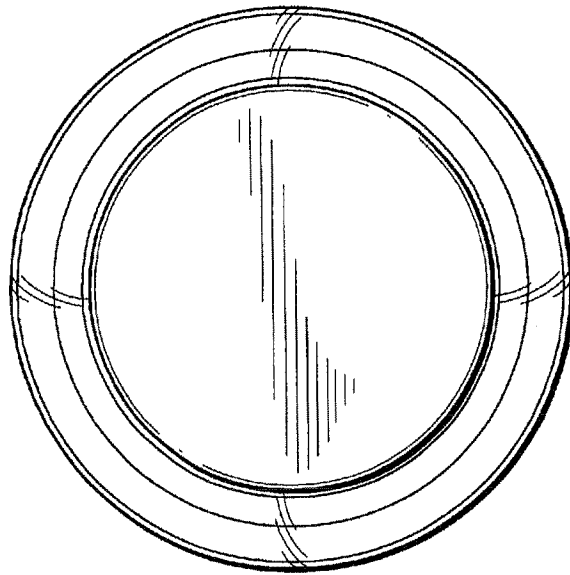
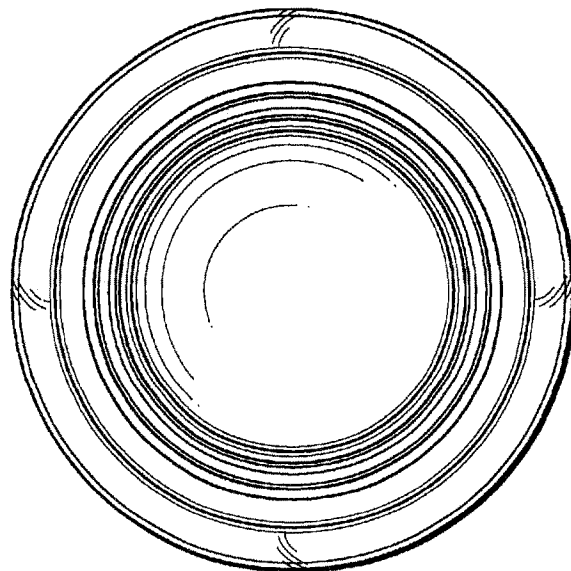


FIG. 4



200,362

COMBINED JAR AND CLOSURE THEREFOR

Melvin O. Nelson, 16004 R. D. Mize Road, Independence, Mo., and Ray O. Neyman, 7200 Pennsylvania St., Kansas City, Mo.

Filed Nov. 29, 1962, Ser. No. 72,651

Term of patent 14 years

(Cl. D58—25)

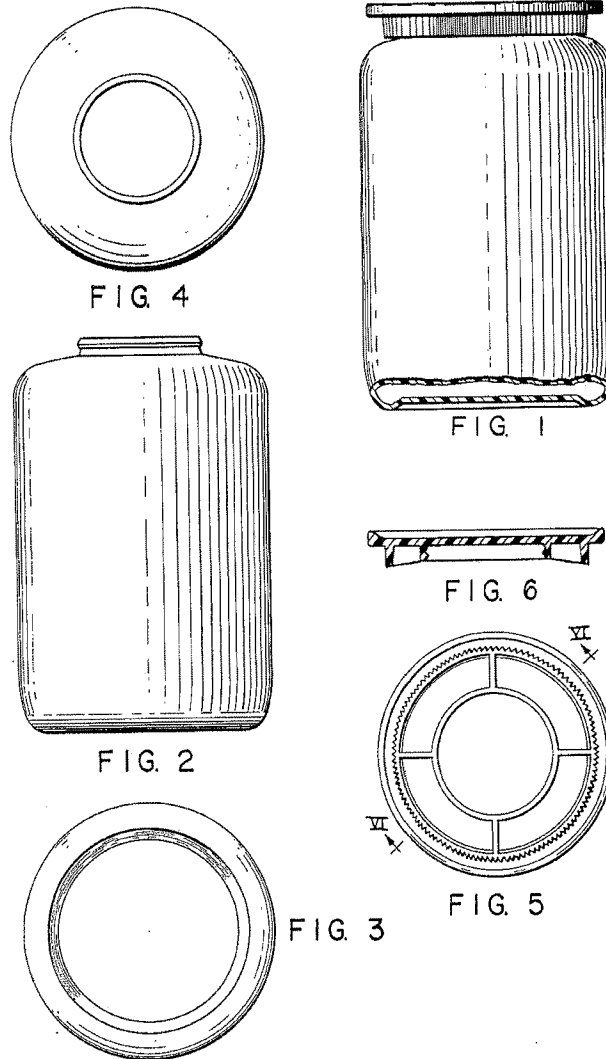


FIG. 1 is an elevational view partially in section of the combined jar and closure showing our new design;
FIG. 2 is a side elevational view of the jar;
FIG. 3 is the bottom plan view thereof;
FIG. 4 is the top plan view thereof;
FIG. 5 is a bottom plan view of the closure; and,
FIG. 6 is a cross sectional view taken on line VI of FIG. 5.

We claim:

The ornamental design for a combined jar and closure therefor, as shown.

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273,049	4/51	Sweden.
366,245	2/32	Great Britain.
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Modern Packaging, April 1961, p. 312, jar far left of photograph at bottom of page.
Illinois Glass Co., p. 59, closure top left of page.

EDWIN H. HUNTER, *Primary Examiner*.

JOEL STEARMAN, *Examiner*.



US00D391485S

United States Patent [19]**Biesecker, II et al.**[11] **Patent Number:** **Des. 391,485**[45] **Date of Patent:** ****Mar. 3, 1998**[54] **BOTTLE**[75] **Inventors:** **Frederick N. Biesecker, II, Villanova;**
Gregory Sprishen, Collegeville, both
of Pa.[73] **Assignee:** **Drug Plastics and Glass Company,**
Inc., Boyertown, Pa.[**] **Term:** **14 Years**[21] **Appl. No.:** **60,527**[22] **Filed:** **Sep. 30, 1996**[51] **LOC (6) Cl.** **09-01**[52] **U.S. Cl.** **D9/500**[58] **Field of Search** **D9/500, 503, 501,**
D9/504, 505, 545, 520; 215/382, 383, 384[56] **References Cited****U.S. PATENT DOCUMENTS**

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 D. 234,913 4/1975 Morgan .
 D. 274,220 6/1984 Biesecker .
 D. 274,221 6/1984 Biesecker .
 D. 276,889 12/1984 Biesecker .
 D. 277,076 1/1985 Biesecker .
 D. 278,683 5/1985 Biesecker .
 D. 282,909 3/1986 Biesecker .
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 D. 284,362 6/1986 Biesecker .
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 D. 284,839 7/1986 Biesecker .
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 2274443 7/1994 United Kingdom .
 WO 91/17926 11/1991 WIPO .

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U.S. Trademark Registration No. 1,776,570 dated Jun. 15, 1993.

Primary Examiner—Lucy Lieberman
Attorney, Agent, or Firm—Panitch Schwarze Jacobs & Nadel, P.C.

[57] **CLAIM**

The ornamental design for a bottle, as shown and described.

DESCRIPTION

FIG. 1 is a front elevation of a bottle showing our new design, the rear and side elevations are the same except for the conventional screw threading on the bottle neck;

FIG. 2 is a top view thereof; and,

FIG. 3 is a bottom view thereof.

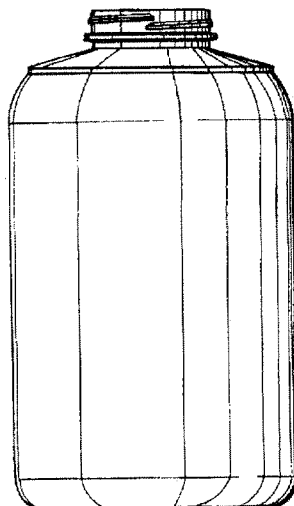
1 Claim, 1 Drawing Sheet

FIG. 1

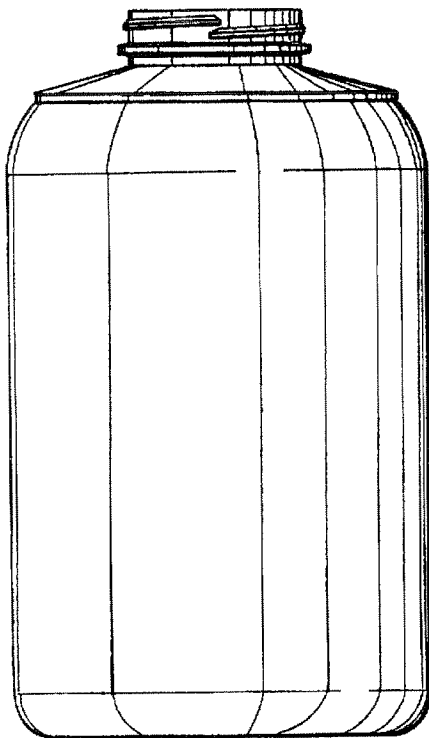


FIG. 2

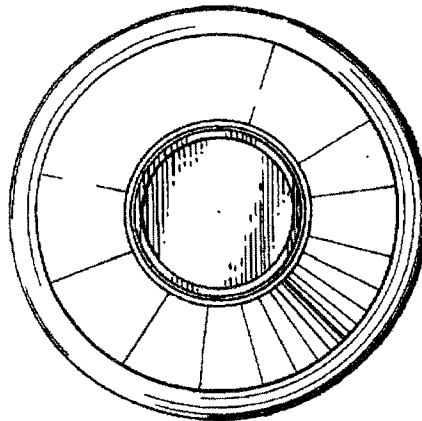
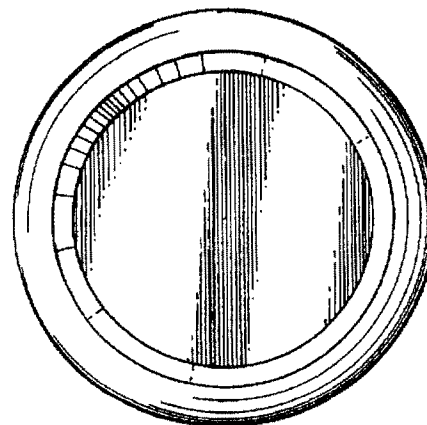


FIG. 3





US00D506135S

(12) **United States Design Patent** (10) Patent No.: **US D506,135 S**
Breier et al. (45) Date of Patent: **** Jun. 14, 2005**

(54) **BOTTLE**

(75) Inventors: **Stephan Breier, Vienna (AT);**
Johannes Scherr, Vienna (AT)

(73) Assignee: **Stock Vital GmbH & Co. KG, Fuschl**
am See (AU)

(**) Term: **14 Years**

(21) Appl. No.: **29/190,858**

(22) Filed: **Sep. 25, 2003**

(51) **LOC (8) Cl. 09-01**

(52) **U.S. Cl. D9/500; D9/502**

(58) **Field of Search D9/300, 500, 502-505,**
D9/509, 513, 515-516, 529, 530, 537-540,
544-546, 549, 557-558, 725; 215/121.1-12.2,
381-385, 396, 398, 400

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D471,815 S * 3/2003 Gnann et al. D9/503

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* cited by examiner

Primary Examiner—Carol Rademaker

(74) *Attorney, Agent, or Firm*—TechMark; Martin R.
Greenstein

(57) **CLAIM**

The ornamental design for a bottle, as shown and described.

DESCRIPTION

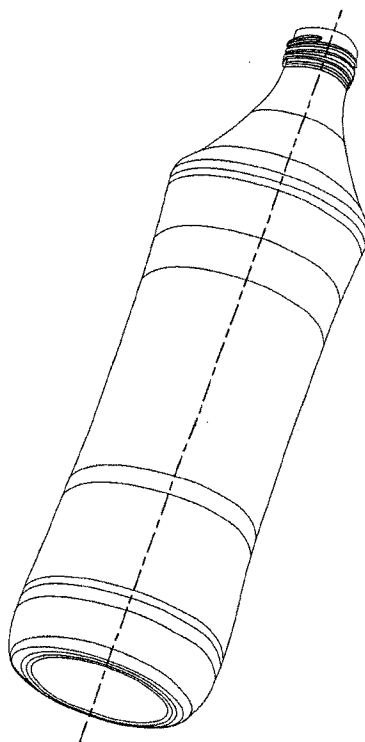
FIG. 1 is a perspective view of the bottle showing our new design;

FIG. 2 is a front elevational view thereof, the rear, right side, and left side being identical except for the threads;

FIG. 3 is a top plan view thereof; and,

FIG. 4 is a bottom plan view thereof.

1 Claim, 1 Drawing Sheet



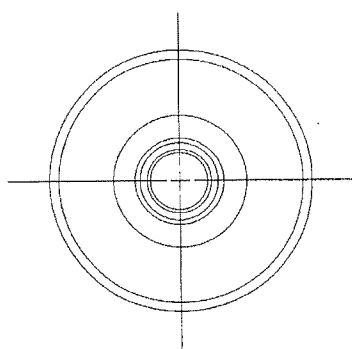
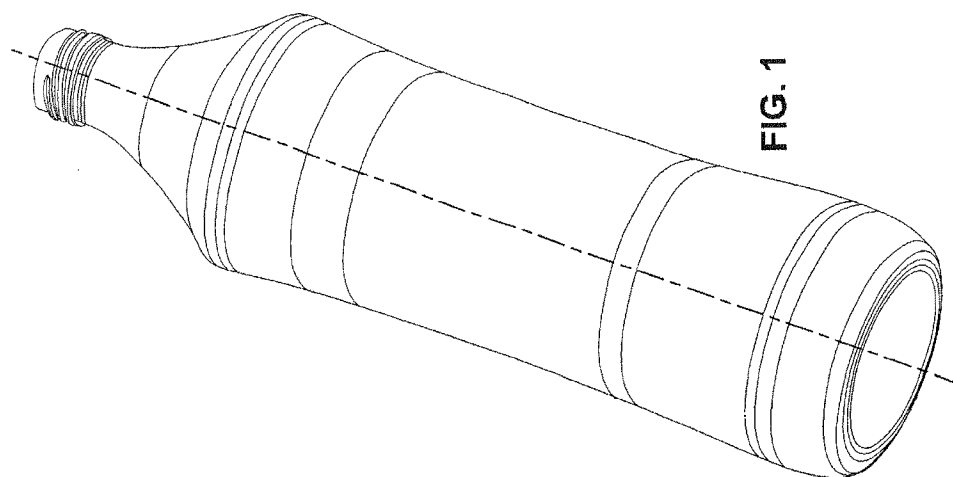


FIG. 3

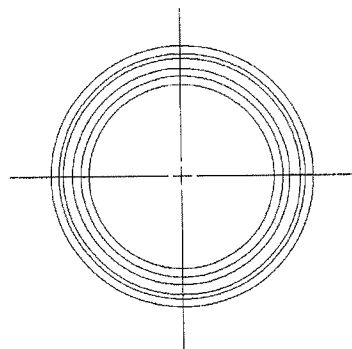


FIG. 4

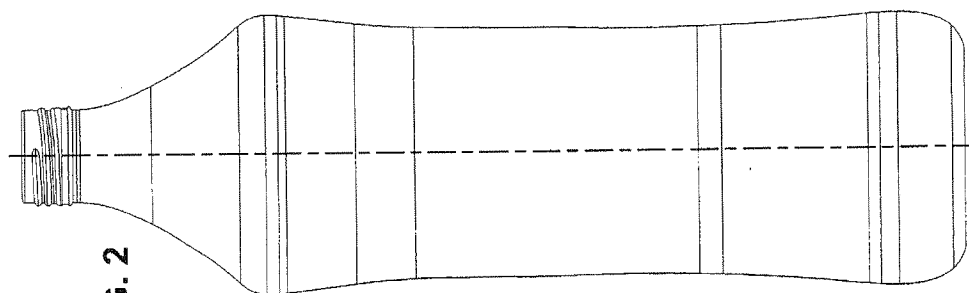


FIG. 2



US00D357418S

United States Patent [19]

Lonczak et al.

[11] Patent Number: **Des. 357,418**
[45] Date of Patent: **** Apr. 18, 1995**

[54] COMBINED BOTTLE AND CAP

[75] Inventors: **John Lonczak**, Newburgh; **Leonard A. Filiz**; **Kin S. Yan**, both of New York; **Victor Ivenitsky**, Bronx, all of N.Y.

[73] Assignee: **Johnson & Johnson Consumer Products, Inc.**, Skillman, N.J.

[**] Term: **14 Years**

[21] Appl. No.: **932,851**

[22] Filed: **Aug. 20, 1992**

[52] U.S. Cl. **D9/558; D9/574**

[58] Field of Search **D9/558, 574, 571, 544, D9/545, 446, 447, 449; 215/1 R, 1 C, 235; 222/556**

[56] References Cited

U.S. PATENT DOCUMENTS

D. 37,819	2/1906	Bradley	.....	D9/558	X
4,403,712	9/1983	Wiesinger	.....	220/339	
4,742,928	5/1988	Braun	.....	222/556	X

FOREIGN PATENT DOCUMENTS

821304 7/1991 Japan .

OTHER PUBLICATIONS

Beauty Fashion vol. 66, Jan.-Jun. 1982, Christian Dior Jules Eau de Toilette bottle.

Johnson & Johnson Consumer Products, Inc. product Literature entitled "Baby Skin Care" (Apr. 1992) and "Marketing Support/Merchandising" (Oct. 1991).

Primary Examiner—Lucy J. Lieberman

[57] CLAIM

The ornamental design for a combined bottle and cap, as shown and described.

DESCRIPTION

FIG. 1 is a top, front and left side perspective view of a combined bottle and cap showing our new design; FIG. 2 is a top plan view thereof; FIG. 3 is a front elevational view thereof; FIG. 4 is a right side elevational view thereof, the opposite side being a mirror image; FIG. 5 is a rear elevational view thereof; FIG. 6 is a bottom plan view thereof; and, FIG. 7 is a top, front and left side perspective view of a transparent embodiment thereof.

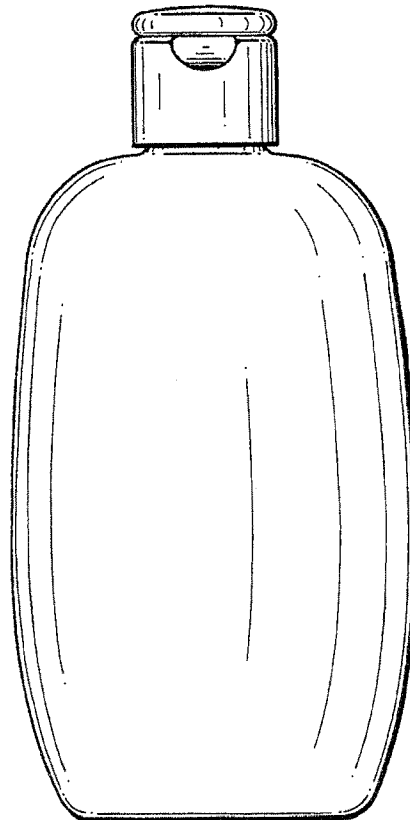


FIG-1

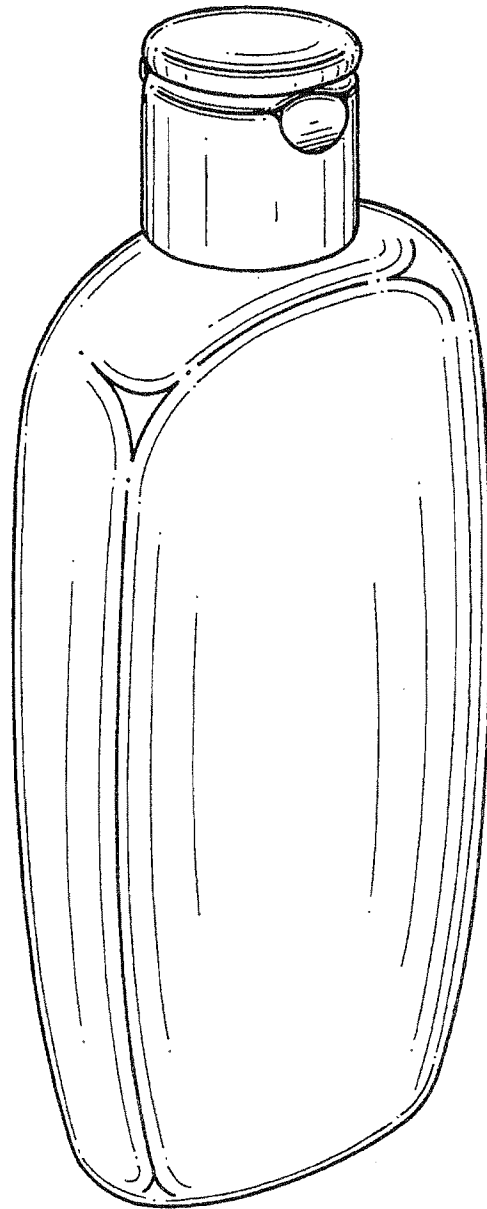


FIG-2

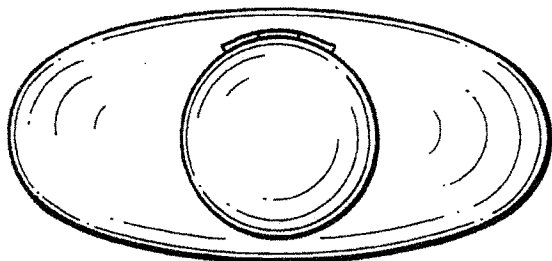


FIG-3

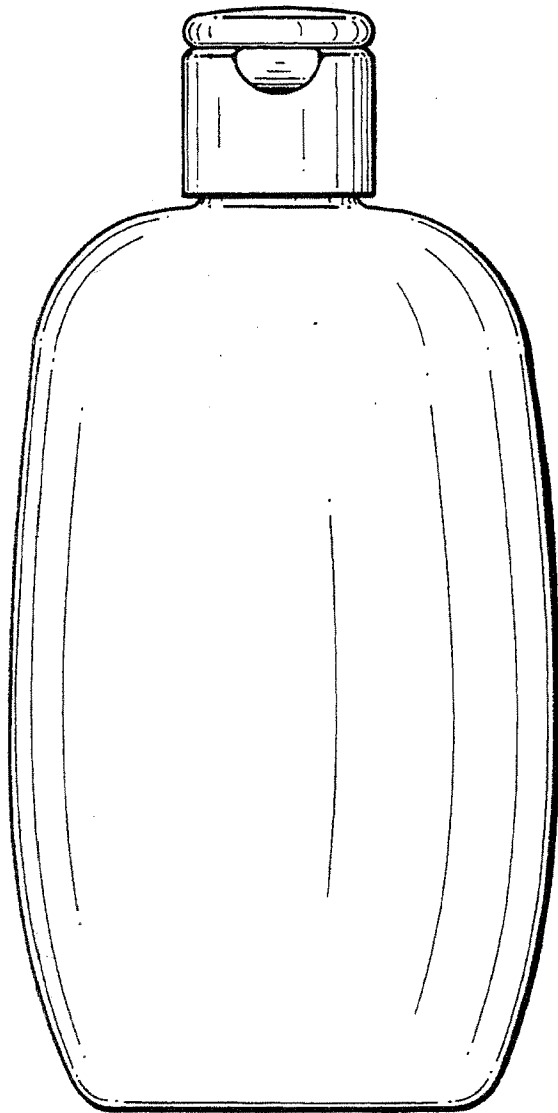


FIG-4

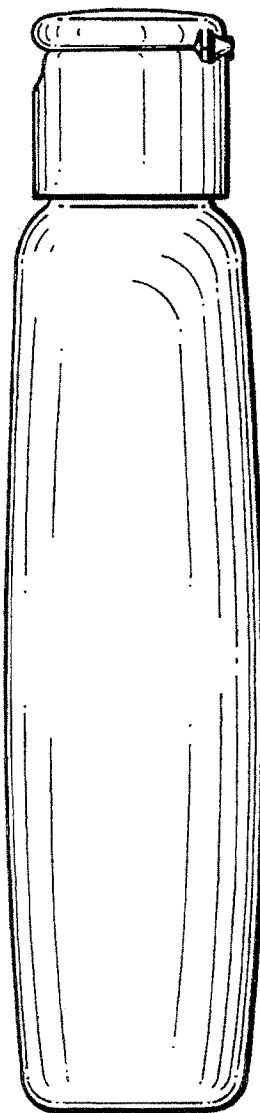


FIG-5

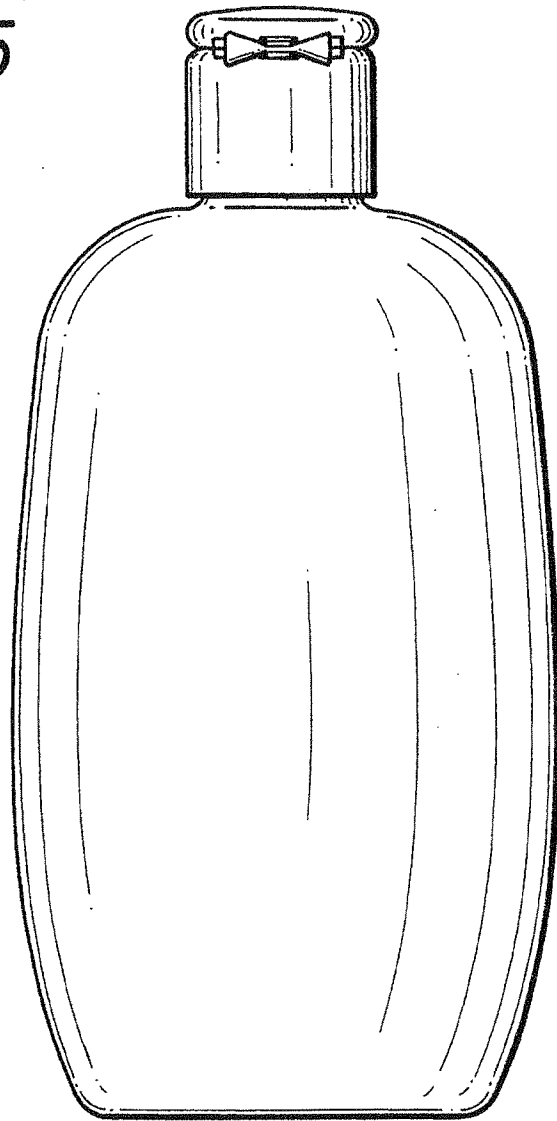


FIG-6

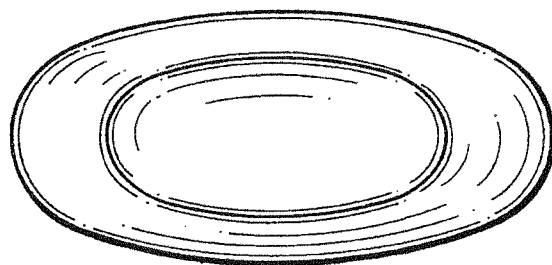
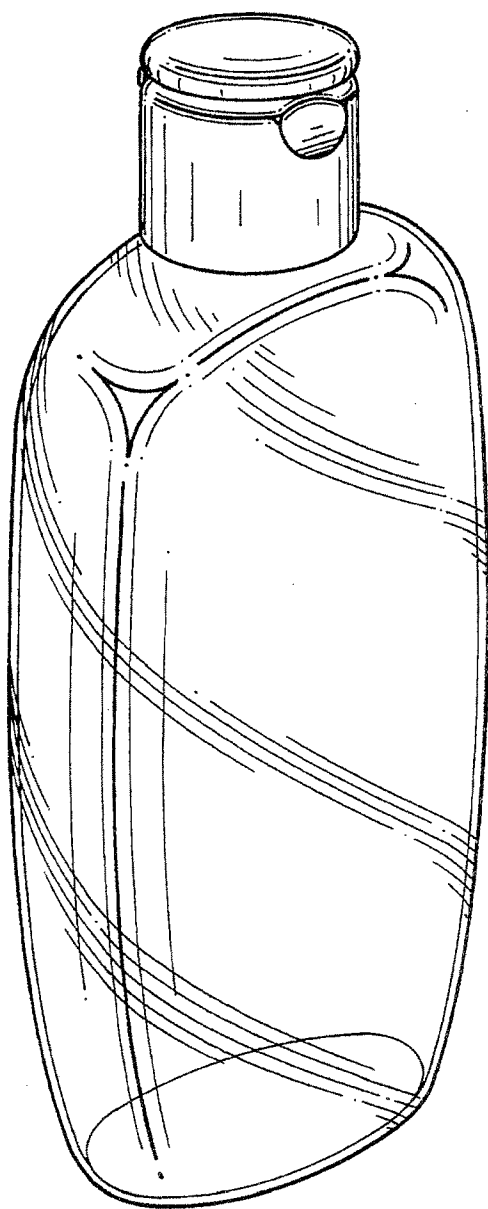


FIG-7





US00D437559S

(12) **United States Design Patent** (10) Patent No.: **US D437,559 S**
Fenton et al. (45) Date of Patent: **** Feb. 13, 2001**

(54) **BOTTLE**

(75) Inventors: **Russell Rowan Fenton; Elmer (Chuck) H. Goss**, both of East Amherst, NY (US)

(73) Assignee: **FWJ Plastic Packaging, Inc.**, Getzville, NY (US)

(**) Term: **14 Years**

(21) Appl. No.: **29/124,416**

(22) Filed: **Jun. 6, 2000**

(51) LOC (7) Cl. **09-01**

(52) U.S. Cl. **D9/558**

(58) Field of Search 29/558, 574, 447, 29/449, 571, 544, 545; 215/283-285

(56) **References Cited**

U.S. PATENT DOCUMENTS

D. 349,857 * 8/1994 Lonczak et al. D9/558

D. 357,418 * 4/1995 Lonczak et al. D9/558
D. 376,320 * 12/1996 Lathrop et al. D9/558
D. 382,209 * 8/1997 Fenton et al. D9/558

* cited by examiner

Primary Examiner—Mitchell Siegel

(74) Attorney, Agent, or Firm—Harpman & Harpman

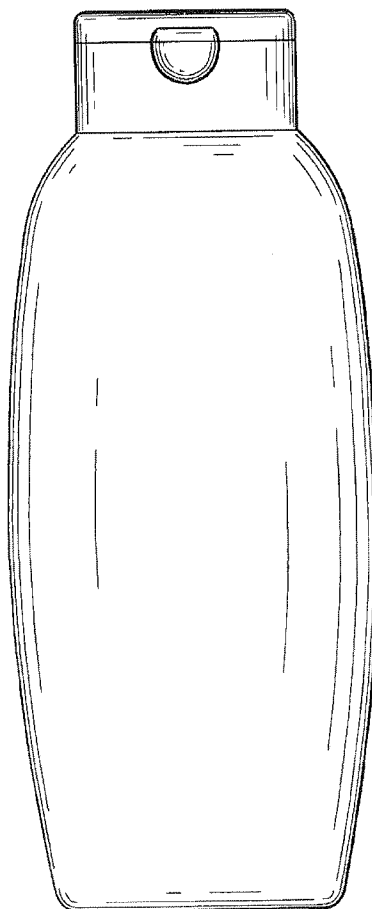
(57) **CLAIM**

The ornamental design for a bottle, as shown and described.

DESCRIPTION

FIG. 1 is a front elevation thereof;
FIG. 2 is a right side elevational view thereof;
FIG. 3 is a rear elevation thereof;
FIG. 4 is a left side elevational view thereof;
FIG. 5 is a top plan view thereof; and,
FIG. 6 is a bottom plan view thereof.

1 Claim, 3 Drawing Sheets



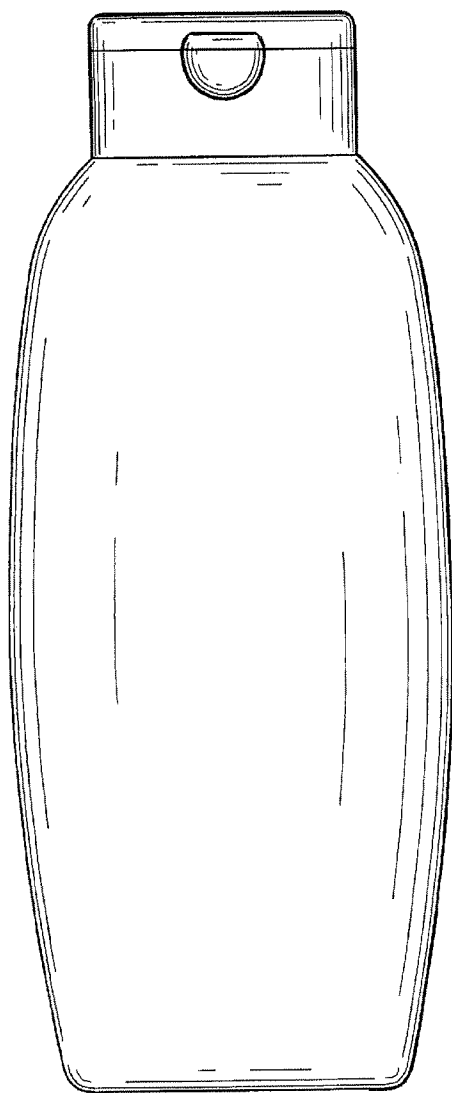


FIG. 1

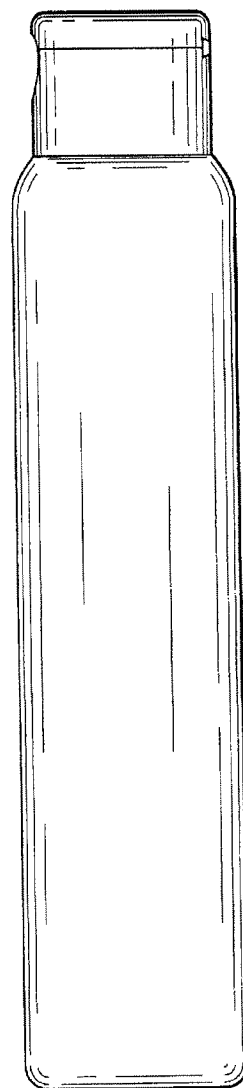


FIG. 2

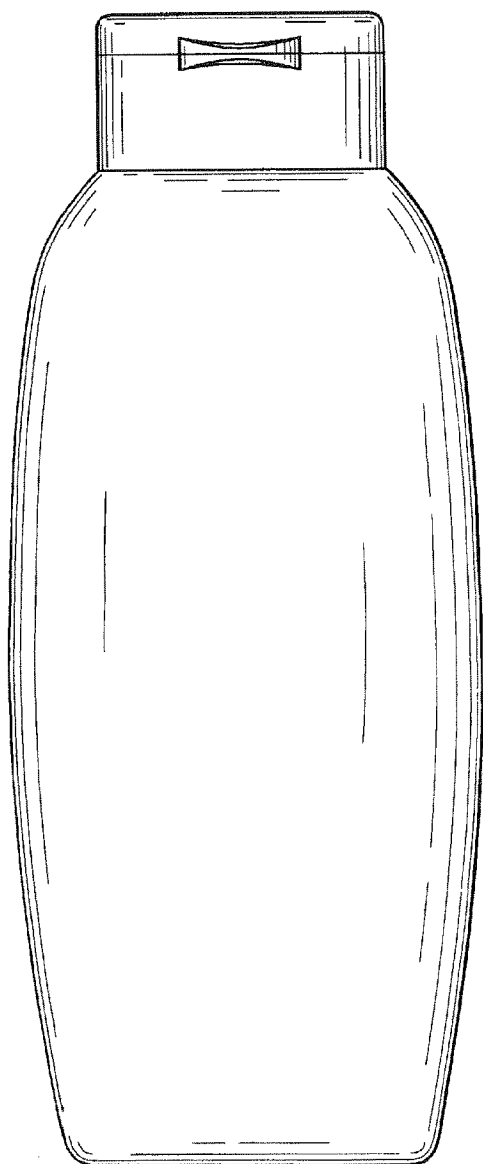


FIG. 3

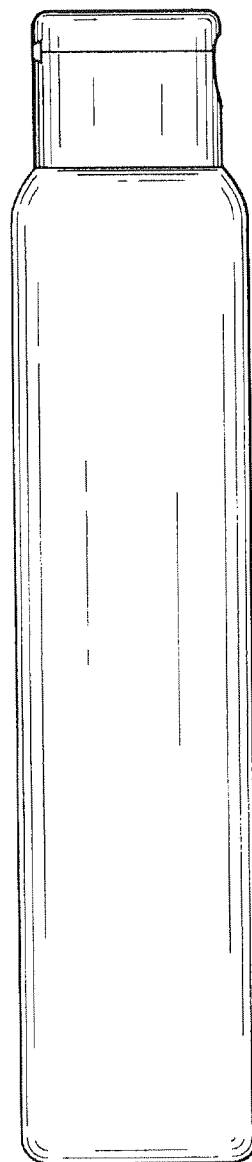


FIG. 4

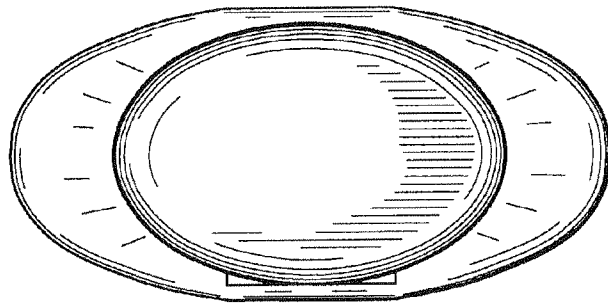


FIG. 5

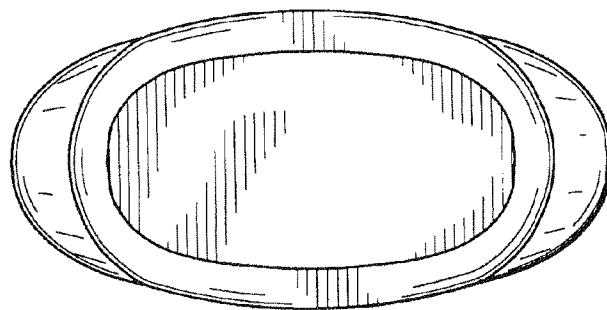


FIG. 6

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IC 021. US 002 050. G & S: plastic bottles sold empty. FIRST USE: 19830000. FIRST USE IN COMMERCE: 19830000

Mark Drawing Code

(2) DESIGN ONLY

Design Search Code

19.09.03 - Bottles, jars or flasks with straight, vertical sides; Flasks with straight or vertical sides; Jars with straight or vertical sides

Serial Number

74192059

Filing Date

August 6, 1991

Current Filing Basis

1A

Original Filing Basis

1A

Published for Opposition

March 23, 1993

Registration Number

1776570

Registration Date

June 15, 1993

Owner

(REGISTRANT) Drug Plastics & Glass Company, Inc. CORPORATION PENNSYLVANIA One Bottle Drive Boyertown PENNSYLVANIA 19512

Attorney of Record

JORDAN A LAVINE

Description of Mark

The mark consists of the shoulder portion of the bottle and the portion of the bottle above the shoulder, excluding the neck of the bottle to which a cap can be applied. The dotted lines in the drawing indicate matter that is not part of the mark which serve only to indicate the relative position of the mark. The shading in the drawing is a feature of the mark showing dimension and does not indicate color.

Type of Mark TRADEMARK
 Register PRINCIPAL-2(F)
 Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20030212.
 Renewal 1ST RENEWAL 20030212
 Live/Dead Indicator LIVE

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Serial Number: 74192059

Registration Number: 1776570

Mark



Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2003-02-12

Filing Date: 1991-08-06

Transformed into a National Application: No

Registration Date: 1993-06-15

Register: Principal

Law Office Assigned: LAW OFFICE 6

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Current Location: 900 -File Repository (Franconia)

Date In Location: 2003-02-13

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Drug Plastics & Glass Company, Inc.

Address:

Drug Plastics & Glass Company, Inc.
One Bottle Drive
Boyertown, PA 19512
United States

Legal Entity Type: Corporation
State or Country of Incorporation: Pennsylvania

GOODS AND/OR SERVICES

International Class: 021
Class Status: Active
plastic bottles sold empty
Basis: 1(a)
First Use Date: 1983-00-00
First Use in Commerce Date: 1983-00-00

ADDITIONAL INFORMATION

Description of Mark: The mark consists of the shoulder portion of the bottle and the portion of the bottle above the shoulder, excluding the neck of the bottle to which a cap can be applied. The dotted lines in the drawing indicate matter that is not part of the mark which serve only to indicate the relative position of the mark.

Lining and Stippling: The shading in the drawing is a feature of the mark showing dimension and does not indicate color.

Section 2(f)**Design Search Code(s):**

19.09.03 - Bottles, jars or flasks with straight, vertical sides; Flasks with straight or vertical sides; Jars with straight or vertical sides

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2003-02-12 - First renewal 10 year

2003-02-12 - Section 8 (10-year) accepted/ Section 9 granted

2003-02-06 - Po



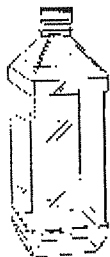
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**Goods and Services**

IC 032. US 045 046 048. G & S: NATURAL, SPRING AND ARTESIAN WATER FOR DRINKING. FIRST USE: 19970516. FIRST USE IN COMMERCE: 19970517

Mark Drawing Code

(2) DESIGN ONLY

Design Search Code
 19.09.03 - Bottles, jars or flasks with straight, vertical sides; Flasks with straight or vertical sides;
 Jars with straight or vertical sides
 19.09.25 - Other bottles, jars or flasks
Serial Number

76162286

Filing Date

November 10, 2000

Current Filing Basis

1A

Original Filing Basis

1A

Published for Opposition

September 28, 2004

Registration Number

2911918

Registration Date

December 21, 2004

Owner

(REGISTRANT) Natural Waters of Viti, Ltd. CORPORATION FIJI P.O. Box 4 Aspen COLORADO 81612

(LAST LISTED OWNER) FIJI WATER COMPANY LLC LIMITED LIMITED COMPANY DELAWARE 11444 W. OLYMPIC BLVD., 10TH FLOOR LOS ANGELES CALIFORNIA 90064

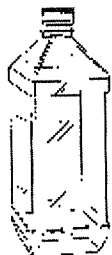
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Serial Number: 76162286 Assignment Information

Registration Number: 2911918 Assignment Information

Mark



Standard Character claim: No

Current Status: Registered.

Date of Status: 2004-12-21

Filing Date: 2000-11-10

Transformed into a National Application: No

Registration Date: 2004-12-21

Register: Principal

Law Office Assigned: LAW OFFICE 111

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Current Location: 650 -Publication And Issue Section

Date In Location: 2004-12-21

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. FIJI WATER COMPANY LLC

Address:

FIJI WATER COMPANY LLC
11444 W. OLYMPIC BLVD., 10TH FLOOR
LOS ANGELES, CA 90064
United States

Legal Entity Type: LIMITED LIMITED COMPANY**State or Country Where Organized:** Delaware

GOODS AND/OR SERVICES

International Class: 032

NATURAL, SPRING AND ARTESIAN WATER FOR DRINKING

First Use Date: 1997-05-16**First Use in Commerce Date:** 1997-05-17**Basis:** 1(a)

ADDITIONAL INFORMATION

Disclaimer: the representation of the shape of the bottle cap**Description of Mark:** The mark consists of a configuration of a bottle and cap. The bottle and cap are depicted in solid lines and are part of the mark.**Lining and Stippling:** The cap is lined for the color blue.**Section 2(f)****Design Search Code(s):**

19.09.03 - Bottles, jars or flasks with straight, vertical sides; Flasks with straight or vertical sides; Jars with straight or vertical sides

19.09.25 - Other bottles, jars or flasks

Prior Registration Number(s):

2286974

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2004-12-21 - Registered - Principal Register

2004-09-28 - Published for opposition
2004-09-08 - Notice of publication
2004-07-28 - Law Office Publication Review Completed
2004-07-28 - Assigned To LIE
2004-07-26 - Approved for Pub - Principal Register (Initial exam) |
2004-04-06 - Communication received from applicant
2004-04-27 - Case File in TIGRS
2004-04-06 - PAPER RECEIVED
2003-10-09 - Non-final action mailed
2003-04-03 - Communication received from applicant
2003-04-07 - PAPER RECEIVED
2002-10-03 - Non-final action mailed
2002-06-10 - Case file assigned to examining attorney
2001-11-19 - Communication received from applicant
2001-08-13 - Non-final action mailed
2001-06-21 - Case file assigned to examining attorney
2001-05-16 - Case file assigned to examining attorney
2001-03-27 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

Dana Hartje Cardwell (Attorney of record)

DANA HARTJE CARDWELL
SHERIDAN ROSS P C
1560 BROADWAY STE 1200
DENVER CO 80202-5145

1



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Goods and Services

(CANCELLED) IC 032. US 045 046 048. G & S: use as a container for flavored and unflavored water. FIRST USE: 19960301. FIRST USE IN COMMERCE: 19960301

Mark Drawing Code

(2) DESIGN ONLY

Design Search Code

19.09.04 - Bottles, jars or flasks with concave sides; Flasks with concave sides; Jars with concave sides

Serial Number

75164176

Filing Date

September 11, 1996

Current Filing Basis

1A

Original Filing Basis

1A

Published for Opposition

May 26, 1998

Registration Number

2181774

Registration Date

August 18, 1998

Owner

(REGISTRANT) Talking Rain Beverage Co. Inc. CORPORATION WASHINGTON 30520 Southeast 84th Preston WASHINGTON 98050

Attorney of Record

JAMES R UHLIR

Description of Mark The mark consists of the configuration of a beverage bottle. The dotted outline of the cap is not part of the mark is merely intended to represent the bottle as viewed on the shelf.

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)

Live/Dead Indicator DEAD

Cancellation Date May 21, 2005

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Serial Number: 75164176

Registration Number: 2181774

Mark



Standard Character claim: No

Current Status: Registration canceled under Section 8.

Date of Status: 2005-05-21

Filing Date: 1996-09-11

Transformed into a National Application: No

Registration Date: 1998-08-18

Register: Principal

Law Office Assigned: LAW OFFICE 101

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Current Location: 900 -File Repository (Franconia)

Date In Location: 2001-04-23

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Talking Rain Beverage Co. Inc.

Address:

Talking Rain Beverage Co. Inc.

30520 Southeast 84th

Preston, WA 98050

United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Washington

GOODS AND/OR SERVICES

International Class: 032

use as a container for flavored and unflavored water

First Use Date: 1996-03-01**First Use in Commerce Date:** 1996-03-01**Basis:** 1(a)

ADDITIONAL INFORMATION

Description of Mark: The mark consists of the configuration of a beverage bottle. The dotted outline of the cap is not part of the mark is merely intended to represent the bottle as viewed on the shelf.

Section 2(f)**Design Search Code(s):**

19.09.04 - Bottles, jars or flasks with concave sides; Flasks with concave sides; Jars with concave sides

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2005-05-21 - Canceled Section 8 (6-year)

1998-08-18 - Registered - Principal Register

1998-05-26 - Published for opposition

1998-04-24 - Notice of publication

1998-02-27 - Approved for Pub - Principal Register (Initial exam)

1997-10-20 - Communication received from applicant

1997-10-14 - Communication received from applicant

1997-04-14 - Non-final action mailed

1997-03-17 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

JAMES R UHLIR (Attorney of record)

JAMES R UHLIR
CHRISTENSEN O'CONNOR JOHNSON & KINDNESS
1420 FIFTH AVENUE SUITE 2800
SEATTLE WA 98101-2347



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**Goods and Services**

IC 032. US 045 046 048. G & S: BOTTLED SPRING WATER. FIRST USE: 19970101. FIRST USE IN COMMERCE: 19970101

Mark Drawing Code (2) DESIGN ONLY**Design Search Code**

19.09.03 - Bottles, jars or flasks with straight, vertical sides; Flasks with straight or vertical sides; Jars with straight or vertical sides

Serial Number

75509018

Filing Date

June 25, 1998

Current Filing Basis

1A

Original Filing Basis

1A

Published for Opposition

September 12, 2000

Registration Number

2409809

Registration Date

December 5, 2000

Owner(REGISTRANT) AVALON BEVERAGE COMPANY CORPORATION VIRGINIA P.O. Box 5457
Glen Allen VIRGINIA 230585457**Attorney of Record**

FRANCIS T. ECK

Description of Mark

The mark consists of the shape of the container of the goods. The lining shown in the drawing is a feature of the mark and is not intended to indicate color.

Type of Mark

TRADEMARK

Register PRINCIPAL
Live/Dead Indicator LIVE

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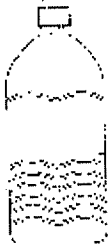
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Serial Number: 75509018

Registration Number: 2409809

Mark



Standard Character claim: No

Current Status: Registered.

Date of Status: 2000-12-05

Filing Date: 1998-06-25

Transformed into a National Application: No

Registration Date: 2000-12-05

Register: Principal

Law Office Assigned: LAW OFFICE 111

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Current Location: 900 -File Repository (Franconia)

Date In Location: 2000-12-08

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. AVALON BEVERAGE COMPANY

Address:

AVALON BEVERAGE COMPANY

P.O. Box 5457

Glen Allen, VA 230585457

United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Virginia

GOODS AND/OR SERVICES

International Class: 032

BOTTLED SPRING WATER

First Use Date: 1997-01-01**First Use in Commerce Date:** 1997-01-01**Basis:** 1(a)

ADDITIONAL INFORMATION

Description of Mark: The mark consists of the shape of the container of the goods.**Lining and Stippling:** The lining shown in the drawing is a feature of the mark and is not intended to indicate color.**Design Search Code(s):****19.09.03** - Bottles, jars or flasks with straight, vertical sides; Flasks with straight or vertical sides; Jars with straight or vertical sides

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2000-12-05 - Registered - Principal Register

2000-09-12 - Published for opposition

2000-08-11 - Notice of publication

2000-06-06 - Approved for Pub - Principal Register (Initial exam)

1999-12-08 - Communication received from applicant

1999-07-29 - Non-final action mailed

1999-04-30 - Communication received from applicant

1998-11-20 - Non-final action mailed

1998-09-24 - Case file assigned to examining attorney

1998-09-24 - Case file assigned to examining attorney

CORRESPONDENCE INFORMATION

Correspondent

FRANCIS T. ECK (Attorney of record)

FRANCIS T. ECK
ECK LEWIS ANDERSON & COLLINS
16 S 2ND ST
RICHMOND VA 23219-3723



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**Word Mark**

JÄGERMEISTER

Translations

The English translation of the term "JAGERMEISTER" is "MASTER OF THE HUNT".

Goods and Services

IC 033. US 047 049. G & S: Alcoholic spirits, namely, distilled spirits, alcoholic bitters and herbal liqueurs

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code

19.09.03 - Bottles, jars or flasks with straight, vertical sides; Flasks with straight or vertical sides; Jars with straight or vertical sides

Serial Number

79000949

Filing Date

January 26, 2004

Current Filing Basis

66A

Original Filing Basis

66A

Published for Opposition

April 26, 2005

Registration Number

2970791

International Registration Number

0717647

Registration Date

July 19, 2005

Owner (REGISTRANT) Mast-Jägermeister AG CORPORATION FED REP GERMANY
Jägermeisterstrasse 7-15 D-38296 Wolfenbüttel FED REP GERMANY

Attorney of Record DAVID TOREN

Prior Registrations 0857604;1952558;2824183;AND OTHERS

Description of Mark The color(s) green is/are claimed as a feature of the mark. The color green appears in the bottle configuration portion of the mark. The mark consists of the configuration of the bottle container for the goods, having indented sides with the name "JAGERMEISTER" embossed on the sides of the bottle thereon.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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**Goods and Services**

IC 030. US 046. G & S: sauce for use with foods. FIRST USE: 19891231. FIRST USE IN COMMERCE: 19891231

Mark Drawing Code

(2) DESIGN ONLY

Design Search Code

19.09.03 - Bottles, jars or flasks with straight, vertical sides; Flasks with straight or vertical sides; Jars with straight or vertical sides

Serial Number

78204394

Filing Date

January 17, 2003

Current Filing Basis

1A

Original Filing Basis

1A

Published for Opposition

April 13, 2004

Registration Number

2860078

Registration Date

July 6, 2004

Owner

(REGISTRANT) Jose Cuervo, S.A. de C.V. CORPORATION MEXICO Guillermo Gonzalez Camarena #800 ZedecSanta Fe, Delegacion A. Obregon Mexico, D.F. MEXICO C.P.01210

Attorney of Record

LAWRENCE E ABELMAN

Description of Mark The mark consists of the representation of a bottle.
Type of Mark TRADEMARK
Register PRINCIPAL-2(F)
Live/Dead Indicator LIVE

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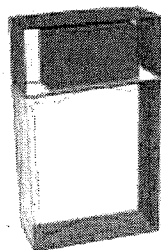
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Goods and Services

IC 003. US 001 004 006 050 051 052. G & S: PERFUMES; COLOGNES. FIRST USE: 20020300.
FIRST USE IN COMMERCE: 20020300

Mark Drawing Code

(2) DESIGN ONLY

Design Search Code

19.09.03 - Bottles, jars or flasks with straight, vertical sides; Flasks with straight or vertical sides; Jars with straight or vertical sides
19.09.25 - Other bottles, jars or flasks
19.11.01 - Bottle caps; Caps, bottle; Corks (bottle stoppers); Lids; Stoppers, bottle
26.11.21 - Rectangles that are completely or partially shaded
26.11.28 - Miscellaneous designs with overall rectangular shape; Rectangular shapes (miscellaneous overall shape)
26.17.25 - Other lines, bands or bars

Serial Number 76570894

Filing Date January 16, 2004

Current Filing Basis 1A

Original Filing Basis 1A

Supplemental Register Date October 11, 2005

Registration Number 3036891

Registration Date December 27, 2005

Owner (REGISTRANT) CAROLINA HERRERA LTD. CORPORATION DELAWARE 501 Seventh Avenue
New York NEW YORK 10018

Attorney of Record Brooks R. Bruneau

Description of Mark The colors red, pink, purple and orange are claimed as a feature of the mark. The color red appears on the internal rectangle box within the rectangle shaped cap section. The color transparent red appears on the top and exterior side panels of the rectangle shaped cap. The color transparent pink appears on both exterior side panels to the product container below the rectangle shaped cap, and the left hand interior side panel from the bottom of the product container up to the top of rectangle shaped cap. The color transparent purple appears on the right hand interior side panel surface, from the bottom of the product container up to the top of the rectangle shaped cap. The color orange appears on the bottom panel of the product container. The mark consists of product packaging in the form of a three-dimensional rectangle bottle presented in broken lines, in which the top portion represents a rectangle shaped cap presented in broken lines with an internal rectangle box that is opaque red. The bottom portion of the three-dimensional rectangle contains an internal chamber with wavy sides. The front and back surfaces of three-dimensional rectangle are clear; the bottom surface is transparent orange; both exterior side panel surfaces below the rectangle shaped cap are transparent pink; the top and exterior side panels of the cap are transparent red; the left hand interior side panel surface, from the bottom of the product container up to the top of the rectangle shaped cap, is transparent pink; the right hand interior side panel surface, from the bottom of the product container up to the top of the rectangle shaped cap, is transparent purple.

Type of Mark TRADEMARK

Register SUPPLEMENTAL

Live/Dead Indicator LIVE

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Goods and Services IC 029. US 046. G & S: olive oil. FIRST USE: 19830000. FIRST USE IN COMMERCE: 19900611

Mark Drawing Code (2) DESIGN ONLY

Design Search Code 19.09.03 - Bottles, jars or flasks with straight, vertical sides; Flasks with straight or vertical sides; Jars with straight or vertical sides

Serial Number 76463633

Filing Date November 1, 2002

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition November 4, 2003

Registration Number 2808073

Registration Date January 27, 2004

Owner (REGISTRANT) DOMENICO MANCA S.p.A. CORPORATION ITALY Via Carrabuffas C.P. 56 - 07041 Alghero ITALY

Attorney of Record Wendy K. Marsh

Prior Registrations 1755557

Description of Mark The mark consists of the configuration of a bottle with a cap and concave sides.

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)

Live/Dead Indicator LIVE

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Goods and Services

IC 032. US 045 046 048. G & S: mineral and aerated waters and other non-alcoholic drinks, namely, fruit drinks and fruit based drinks; fruit juices; syrups and other preparations for making beverages, namely fruit based drinks. FIRST USE: 19990930. FIRST USE IN COMMERCE: 20020916

Mark Drawing Code

(2) DESIGN ONLY

Design Search Code

19.09.02 - Bottles, jars or flasks with bulging, protruding or rounded sides; Flasks with bulging or protruding sides; Jars with bulging or protruding sides

Serial Number

76301523

Filing Date

August 20, 2001

Current Filing Basis

1A

Original Filing Basis

1B

Published for Opposition

September 24, 2002

Supplemental Register Date

January 20, 2005

Registration Number

2953774

Registration Date

May 17, 2005

Owner

(REGISTRANT) Australiana Group Holdings Pty Ltd. CORPORATION AUSTRALIA 21 Oxford Street Northcote Vic., 3070 AUSTRALIA

**Attorney of
Record** Lawrence E. Abelman
Type of Mark TRADEMARK
Register SUPPLEMENTAL
**Live/Dead
Indicator** LIVE

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IC 033. US 047 049. G & S: Alcoholic beverages, namely distilled spirits. FIRST USE: 19340000. FIRST USE IN COMMERCE: 19340000

Mark Drawing Code (2) DESIGN ONLY**Design Search Code**

19.09.01 - Bottles, jars or flasks of conical or triangular shape; Flasks with conical or triangular shape ; Jars with conical or triangular shape
 26.11.01 - Rectangles as carriers or rectangles as single or multiple line borders
 26.11.25 - Rectangles with one or more curved sides
 26.19.02 - Cylinders (geometric)

Serial Number

76202503

Filing Date

January 29, 2001

Current Filing Basis

1A

Original Filing Basis

1A

Published for Opposition

June 18, 2002

Registration Number

2617158

Registration Date

September 10, 2002

Owner

(REGISTRANT) Southern Comfort Properties, Inc. CORPORATION CALIFORNIA 4040 Civic Center Drive, Suite 528 San Rafael CALIFORNIA 94903

Attorney of Record David S Gooder

Description of Mark The mark consists of a configuration of a bottle for the goods with raised vertical ribs around the shoulder of the bottle, and around the foot of the bottle.

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)

Live/Dead Indicator LIVE

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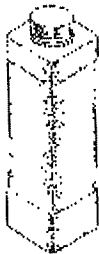
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Goods and Services	IC 032. US 045 046 048. G & S: fruit juice. FIRST USE: 19860319. FIRST USE IN COMMERCE: 19860319
Mark Drawing Code	(2) DESIGN ONLY
Design Search Code	19.09.06 - Bottles, jars or flasks with ribbing or other surface relief; Flasks with ribbing or other surface relief; Jars with ribbing or other surface relief
Serial Number	75260888
Filing Date	March 20, 1997
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	June 8, 1999
Registration Number	2273300
Registration Date	August 31, 1999
Owner	(REGISTRANT) Fresh Juice Company, Inc., The CORPORATION NEW YORK 350 Northern Boulevard Great Neck NEW YORK 11021
Assignment Recorded	ASSIGNMENT RECORDED

Description of Mark The mark consists of a configuration of a bottle with squared off corners. The ribbed cap depicted is depicted in dotted lines and is not part of the mark. The stippling is for shading purposes only.

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)

Live/Dead Indicator LIVE

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Goods and Services IC 030. US 046. G & S: Vinegar. FIRST USE: 19991123. FIRST USE IN COMMERCE: 19991123

Mark Drawing Code (2) DESIGN ONLY

Design Search Code 19.09.01 - Bottles, jars or flasks of conical or triangular shape; Flasks with conical or triangular shape ; Jars with conical or triangular shape
19.09.02 - Bottles, jars or flasks with bulging, protruding or rounded sides; Flasks with bulging or protruding sides; Jars with bulging or protruding sides
19.09.03 - Bottles, jars or flasks with straight, vertical sides; Flasks with straight or vertical sides; Jars with straight or vertical sides
19.09.07 - Jugs; Milk jugs
19.11.01 - Bottle caps; Caps, bottle; Corks (bottle stoppers); Lids; Stoppers, bottle

Serial Number 75902927

Filing Date January 26, 2000

Current Filing Basis 1A

Original Filing Basis 1A

Supplemental Register Date October 16, 2000

Registration Number 2491602

Registration Date September 18, 2001

Owner (REGISTRANT) Lettieri & Co. Ltd. CORPORATION CALIFORNIA 410 E. Grand Avenue
South San Francisco CALIFORNIA 94080

Attorney of Record THOMAS W. COOK

Description of Mark The mark consists of a configuration of a bottle with a folded paper top used as a container for vinegar. The lining in the drawing is for shading purposes.

Type of Mark TRADEMARK

Register SUPPLEMENTAL

Live/Dead Indicator LIVE

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